

**SUPPORTING STATEMENT**  
**Rule 0-2 and Form ADV-NR**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Rule 0-2 under the Investment Advisers Act of 1940 (“Advisers Act”) establishes procedures by which a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser. Under Rule 0-2, persons who wish to serve the above-referenced parties may do so by furnishing the Securities and Exchange Commission (“Commission” or “SEC”) with one copy of the papers that are to be served along with one copy for each named party. The Secretary of the Commission (“Secretary”) will promptly forward a copy to each named party by registered or certified mail. If the Secretary certifies that the rule was followed, the certification constitutes evidence of service of process under rule 0-2.

The title of this collection of information is Rule 0-2 – General Procedures for Serving Non-Residents and Form ADV-NR – Appointment of Agent for Service of Process by Non-Resident General Partner and Non-Resident Managing Agent of an Investment Adviser under the Investment Advisers Act of 1940. Rule 0-2 and Form ADV-NR contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>1</sup> This collection of information has been previously approved and subsequently extended by the Office of Management and Budget (“OMB”) under control number 3235-0240. The likely respondents to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser. This collection of information is found at 17 CFR 275.0-2 and it is mandatory. Responses are not kept confidential.

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<sup>1</sup> 44 U.S.C. 3501 to 3520.

On November 19, 2010, the Commission proposed minor amendments to Form ADV-NR along with proposing new rules and amendments to existing rules and forms under the Advisers Act to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>2</sup> The Commission adopted the amendments to Form ADV-NR on June 22, 2011.<sup>3</sup> The amendments to Form ADV-NR reflect that, under separate rules, certain advisers exempt from registration with the Commission will file reports on Form ADV and will use Form ADV-NR in the same way and for the same purpose as it is currently used by registered investment advisers.<sup>4</sup> The collection of information is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners or agents for violations of the federal securities laws.

## **2. Purpose of the Information Collection**

Rule 0-2 and Form ADV-NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The

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<sup>2</sup> See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3110 (Nov. 19, 2010) [75 FR 77052 (Dec. 10, 2010)] (“Implementing Proposing Release”); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) (“Implementing Adopting Release”).

<sup>4</sup> Both section 203(l) of the Advisers Act [15 U.S.C. 80b-3(l)] (which provides an exemption for an adviser that advises solely one or more “venture capital funds”) and section 203(m) of the Advisers Act [15 U.S.C. 80b-3(m)] (which instructs the Commission to exempt any adviser that acts solely as an adviser to private funds and has assets under management in the United States of less than \$150 million) provide that the Commission shall require such advisers to maintain such records, which we have the authority to examine, and to submit reports “as the Commission determines necessary or appropriate in the public interest.” We adopted new rule 204-4 to require these “exempt reporting advisers” to file reports with the Commission on Form ADV and to submit these reports through the Investment Adviser Registration Depository (“IARD”) using the same process as registered investment advisers.

collection of information is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners and agents for violations of the federal securities laws. Previously, respondents only included non-resident general partners and managing agents of registered advisers. However, under the amendments to Form ADV-NR and other rules and forms adopted in the Implementing Adopting Release, respondents also include non-resident general partners and managing agents of exempt reporting advisers. This collection of information is found at 17 CFR 279.4.

### **3. Role of Improved Information Technology**

Currently, all SEC-registered investment advisers are required to file Part 1 of Form ADV electronically through the IARD.<sup>5</sup> The IARD is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. As discussed, we are also requiring exempt reporting advisers to file reports on Form ADV and to submit these reports through the IARD. The information investment advisers submit to the IARD is stored in a database, and the general public has Internet-access to the data. The IARD also permits investment advisers to meet Commission and state notice filing requirements electronically.

A majority of non-resident investment advisers file a consent to service of process electronically on IARD.<sup>6</sup> However, non-resident general partners and non-resident managing

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<sup>5</sup> *Electronic Filing by Investment Advisers; Amendments to Form ADV*, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)]. The Commission also recently adopted amendments to Part 2 of Form ADV, and related rules under the Advisers Act to require a registered investment adviser to provide new and prospective clients with a brochure and to file the brochure with the Commission electronically. *See Amendments to Form ADV*, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)].

<sup>6</sup> For most non-resident investment advisers, the consent to service of process is furnished by signing the non-resident investment adviser execution page of Form ADV.

agents are required to file a hardcopy of Form ADV-NR with the Commission. Accordingly, the Commission's use of computer technology will have little effect on Form ADV-NR.

**4. Efforts to Identify Duplication**

The collection of information requirements of the form are not duplicated elsewhere.

**5. Effect on Small Entities**

All advisers registered with the Commission, regardless of their size, are equally subject to the collection requirements of Rule 0-2 and Form ADV-NR. In addition, all exempt reporting advisers are equally subject to the collection requirements of Rule 0-2 and Form ADV-NR. It would defeat the purpose of the rule to exempt small entities from these requirements.

**6. Consequences of Less Frequent Collection**

If we did not require a non-resident general partner or non-resident managing agent to file Form ADV-NR, which appoints the Commission as agent for service, it would be much more difficult for both advisory clients and financial service regulators to effectively bring a lawsuit against a non-resident investment adviser.

**7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Not applicable.

**8. Consultation Outside the Agency**

In the Implementing Proposing Release, the Commission requested public comment on the effect of information collections under its proposal to require non-resident exempt reporting advisers to file Form ADV-NR. The Commission did not receive comment on the effect of these information collections. However, The Commission and the staff of the Division of Investment Management continue to participate in an ongoing dialogue with representatives of the investment adviser industry through public conferences, meetings and informal exchanges.

These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens facing the industry.

**9. Payment or Gift to Respondents**

None.

**10. Assurance of Confidentiality**

The information collected pursuant to the rule and Form ADV-NR are filings with the Commission. These disclosures are not kept confidential.

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Hour Burden**

Previously, only non-resident general partners and non-resident managing agents of SEC-registered investment advisers were required to make a one-time filing of Form ADV-NR. With the adoption of amendments in the Implementing Adopting Release, non-resident general partners and non-resident managing agents of exempt reporting advisers are also required to make a one-time filing of Form ADV-NR. The currently approved collection of information burden in Form ADV-NR is 18 hours, which is based upon an estimate of 18 annual responses at 1 hour per response. We estimate that approximately 9,750 advisers will be required to register with the Commission once the Dodd-Frank Act amendments to the Advisers Act become effective.<sup>7</sup> We further estimate that approximately 2000 exempt reporting advisers will file reports with the Commission,<sup>8</sup> and that these advisers will file Form ADV-NR at the same

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<sup>7</sup> See Implementing Adopting Release, *supra* note 3, at n. 655 and accompanying text.

<sup>8</sup> See *id.* at n. 734 and accompanying text.

annual rate (0.17 percent) as advisers registered with us,<sup>9</sup> for a total of approximately 20 filings annually.<sup>10</sup> We continue to estimate that ADV-NR requires an average of one hour to complete. Accordingly, we estimate that as a result of the amendments to Form ADV-NR and the change in the number of filers after the effectiveness of the Dodd-Frank Act, the annual aggregate information collection burden for Form ADV-NR will be 20 hours, an increase of two hours over the currently approved burden of 18 hours.<sup>11</sup>

An adviser would likely use a combination of compliance clerks and clerical staff to complete Form ADV-NR and file it with the Commission. The Commission staff estimates the hourly wage for compliance clerks to be \$67 per hour, including benefits, and the hourly wage for general clerks to be \$50 per hour, including benefits.<sup>12</sup> For each burden hour, compliance clerks would perform an estimated 0.75 hours, and general clerks also would perform an estimated 0.25 hours. The total cost per response therefore would be an estimated \$62.75,<sup>13</sup> for a total burden cost of \$1,255.<sup>14</sup>

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<sup>9</sup> From September 1, 2009 through September 1, 2010, 20 Form ADV-NRs were filed with us for an annual rate for all SEC-registered advisers of 0.17%. (20 Form ADV-NR filings/11,850 advisers registered as of Sept. 1, 2010)

<sup>10</sup>  $0.17\% \text{ (rate of filing)} \times (9,750 \text{ estimated registered investment advisers} + 2,000 \text{ estimated exempt reporting advisers}) = \text{approximately 20 Form ADV-NR filings.}$

<sup>11</sup>  $20 \text{ ADV-NR filings} \times 1 \text{ hour per filing} = 20 \text{ hours. } 20 \text{ hours} - 18 \text{ hours} = 2 \text{ hours.}$

<sup>12</sup> The \$67/hour figure for a compliance clerk and \$50/hour for a general cleric is from SIFMA's Office Salaries in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>13</sup>  $(0.75 \text{ hours per compliance clerk} \times \$67) + (0.25 \text{ hours per general clerk} \times \$50) = (\$50.25 + \$12.50) = \$62.75.$

<sup>14</sup>  $\$62.75 \text{ per adviser} \times 20 \text{ advisers} = \$1,255.$

These estimates of average burden hours and average costs of those average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study, or the cost of Commission rules and forms.

**13. Estimate of Total Annual Cost Burden**

There is no cost burden other than the cost of the hour burden described above.

**14. Estimate of Cost to the Federal Government**

There are no additional costs to the federal government.

**15. Explanation of Changes in Burden**

As discussed in Item 12 above, we estimate that Form ADV-NR will receive two additional annual responses due to the Dodd-Frank Act's amendments to the Advisers Act and the new requirement that exempt reporting advisers file amended Form ADV-NR. This will result in an increase in the total burden hours for all respondents from an estimated 18 hours per year to an estimated 20 hours per year.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Not Display Expiration Date**

Not applicable.

**18. Exception to Certification Statement**

Not applicable.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.