

SUPPORTING STATEMENT
Rule 203-2 and Form ADV-W

A. JUSTIFICATION

1. Necessity of Information Collections

Rule 203-2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration, or a pending registration application, with the Securities and Exchange Commission (“Commission” or “SEC”), and requires every person withdrawing from investment adviser registration with the Commission to file Form ADV-W electronically on the Investment Adviser Registration Depository (“IARD”). The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ shifts primary responsibility from the SEC to the state securities authorities for the regulatory oversight of most investment advisers with assets under management between \$25 million and \$100 million,² and the Commission is raising this threshold to \$110 million.³ The Commission is adopting a rule that will require the advisers that must switch from SEC to state registration to withdraw their SEC registrations by filing Form ADV-W no later than June 28, 2012.⁴ The Commission also is amending the exemption in rule 203A-2(b) that permits certain pension consultants to register with the SEC by raising the minimum value of plan assets an adviser must consult on from \$50 million to \$200 million annually, which will require advisers providing pension consulting services

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² See section 410 of the Dodd-Frank Act.

³ The Commission is adopting a rule that raises the threshold above which a mid-sized investment adviser must register with the Commission to \$110 million; but, once registered with the Commission, an adviser need not withdraw its registration until it has less than \$90 million of assets under management. Amended rule 203A-1(a)(1).

⁴ New rule 203A-5(c)(1). The adopting release is attached as Appendix A (“Appendix A”).

to plans of less than \$200 million to withdraw their SEC registrations by filing Form ADV-W.⁵ The annual aggregate burden associated with the collections of information for rule 203-2 and Form ADV-W are affected by these amendments.

The potential respondents to this information collection in connection with the proposed amendments are all investment advisers registered with the Commission on January 1, 2012 that must withdraw their registrations as a result of the implementation of the Dodd-Frank Act. The collection of information is necessary to assure that the Commission and the public are notified when each of these investment advisers withdraws its SEC registration.

The title of the affected collection of information is: “Rule 203-2 and Form ADV-W under the Investment Advisers Act of 1940.” Its OMB control number is 3235-0313. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This collection of information is found at 17 CFR 275.203-2 and 17 CFR 279.2 and it is mandatory. Responses are not kept confidential.

2. Purposes of Information Collection

Form ADV-W will be used to withdraw an investment adviser’s registration with the Commission as a result of the proposed amendments to implement the Dodd-Frank Act. The purpose of the information collection is to notify the Commission and the public when each investment adviser withdraws its SEC registration.

3. Role of Improved Information Technology

⁵ Amended rule 203A-2(a)(1).

All SEC-registered investment advisers are required to file Part 1 of Form ADV, the form used to register as an investment adviser, electronically through the IARD. The IARD is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. 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 state notice filing requirements electronically.

In conjunction with mandating electronic filing of investment adviser registration forms, the Commission also mandated electronic filing of the form used to withdraw from registration. To withdraw an investment adviser registration, rule 203-2 requires the electronic filing of Form ADV-W on the IARD. Accordingly, the Commission is requiring the SEC-registered advisers that will be required to withdraw their registrations as a result of the proposed amendments to implement the Dodd-Frank Act to withdraw their registrations by filing Form ADV-W electronically on the IARD.

4. Efforts to Identify Duplication

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

5. Effect on Small Entities

The requirements of rule 203-2 and Form ADV-W are the same for all investment advisers registered with the Commission, including small entities. It would defeat the purpose of the rule to exempt small entities from these requirements.

6. Consequences of Less Frequent Collection

Rule 203-2 requires an adviser to notify the Commission when it is withdrawing its SEC registration. If the Commission did not collect this information, the Commission and the public would be unaware that an adviser had gone out of business or was ineligible to remain registered with the Commission.

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

The collection of information imposes no additional requirements regarding record retention.

8. Consultations Outside of the Agency

In its release proposing new rules and rule amendments to implement the Dodd-Frank Act, the Commission requested public comment on the effect of information collections under these rules and amendments. The comments received are discussed below in Item 12 in connection with the current estimates of the hour burden associated with rule 203-2 and Form ADV-W. In addition, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession 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 Gifts to Respondents

None.

10. Assurances of Confidentiality

The information collected pursuant to rule 203-2 and Form ADV-W are filings with the Commission. These filings are not kept confidential.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The current approved total estimated collection of information burden imposed by rule 203-2 and Form ADV-W is 500 hours per year. This burden is based on estimates, derived from past filing volume, that approximately 1,000 respondents file Form ADV-W annually, that approximately 50 percent of those advisers cease operations and complete the entire form to withdraw from all jurisdictions in which they are registered (full withdrawal), and that the remaining 50 percent withdraw from some, but not all, of the jurisdictions in which they are registered and omit certain items from the form (partial withdrawal).⁶ Compliance with the requirement to complete Form ADV-W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal, for a current approved burden of 500 hours.⁷

The amendments the Commission is adopting are expected to increase the current approved burden by increasing the number of respondents filing Form ADV-W. We

⁶ This information is based on data collected from Form ADV-Ws filed through the IARD during year 2009. Form ADV-W is designed to accommodate the different types of withdrawals investment advisers may file. An investment adviser withdrawing from some, but not all, of the jurisdictions in which it is registered omits certain items (e.g., the location of its books and records) that the SEC does not need from an adviser continuing in business as a state-registered adviser.

⁷ $(500 \text{ full Form ADV-Ws} \times 0.75 \text{ hours}) + (500 \text{ partial Form ADV-Ws} \times 0.25 \text{ hours}) = 375 + 125 = 500.$

estimate that approximately 3,200 mid-sized advisers will be required to withdraw their SEC registrations by filing Form ADV-W electronically on the IARD,⁸ and approximately 50 advisers that currently rely on the pension consultant exemption would be required to withdraw their SEC registration in accordance with rule 203-2 by filing Form ADV-W.⁹ These advisers will be required to file only a partial withdrawal, however, because they will be registered with the states. As discussed above, compliance with the requirement to complete Form ADV-W imposes a total burden of approximately 0.25 hours for an adviser filing for partial withdrawal. Thus, we estimate that the proposal associated with filing Form ADV-W will generate an additional burden of 813 hours,¹⁰ for a total burden of 1,313 hours.¹¹

⁸ According to data from the Investment Adviser Registration Depository (“IARD”) as of April 7, 2011, 3,531 SEC-registered advisers either: (i) had assets under management between \$25 million and \$90 million and did not indicate on Part 1A of Form ADV that they are relying on an exemption from the prohibition on Commission registration; or (ii) were permitted to register with us because they rely on the registration of an SEC-registered affiliate that has assets under management between \$25 million and \$90 million and are not relying on an exemption from registration. We estimate that 350 of these advisers are mid-sized advisers and will not switch to state registration because their principal office and place of business is located in Minnesota, New York, or Wyoming. See Appendix A, note 152 (according to IARD data as of April 7, 2011, there were 63 advisers in Minnesota, 286 in New York, and 1 in Wyoming). As a result, we estimate that approximately 3,200 advisers will switch to state registration. 3,531 SEC-registered advisers – 350 advisers not switching to state registration = 3,181 advisers.

⁹ Based on IARD data as of April 7, 2011, there are 322 advisers relying on the pension consultant exemption from registration. We estimate that approximately 15 percent will no longer be eligible to rely on the exemption as adopted. This estimate is based on our understanding that a typical pension consultant will have plan assets far in excess of the higher threshold, in light of the fact that most pension plans contain a significant amount of assets. These advisers do not report the amount of plan assets for which they provide investment advice, so we are unable to determine how many have between \$50 million and \$200 million of plan assets and may have to register with the state securities authorities as a result of the proposed amendment. It is also difficult to determine whether such advisers would be prohibited from registering with the Commission because they are required to register with and are subject to examination by the state securities authority where they maintain a principal office and place of business under the Dodd-Frank Act.

¹⁰ [3,200 + 50 responses on Form ADV-W] x 0.25 hours = 812.5 hours.

¹¹ 500 current hours + 813 additional hours = 1,313 hours.

As discussed in Item 15 below, these estimates are lower than the estimates we established, and requested public comment on, in the Proposing Release. Comments we received related to these estimates pertained to costs associated with amended rule 203A-2(a) and rule 203A-5, not costs associated with these collection of information requirements.¹²

The current approved collection of information burden for rule 203-2 and Form ADV-W is based on an estimate that 500 advisers filing a full withdrawal would likely utilize a combination of compliance professionals and clerical staff to complete Form ADV-W and file it with the Commission, and 500 advisers filing a partial withdrawal would likely use only clerical staff to complete and file Form ADV-W, for a total annual cost of \$71,375.

We anticipate that investment advisers will likely utilize compliance clerks to complete the required portions of Form ADV-W for a partial withdrawal and file it with the Commission. The Commission estimates the hourly wage rate for a compliance clerk to be \$67 per hour, including benefits,¹³ for an additional \$54,471 total for the advisers that will have to file a notice of withdrawal on Form ADV-W and withdraw their registration as a result of the amendments to rule 203A-2(a) and new rule 203A-5.¹⁴

¹² Commenters generally supported the Commission's proposal to amend the pension consultant exemption. *See, e.g.*, Appendix A, notes 439, 780. Several commenters recommended that we provide additional time for these advisers to transition to state registration before filing Form ADV-W to withdraw their registrations with the Commission. *See* Appendix A, notes 413-416 and accompanying text for additional examples of public comments related to rule 203A-5. As a result, the Commission is adopting a June 28, 2012 deadline for advisers to file Form ADV-W, instead of the October 19, 2011 deadline proposed.

¹³ Data from the Securities Industry Financial Markets Association's *Office Salaries in the Securities Industry 2010* modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that the hourly rate for a compliance clerk is \$67.

¹⁴ 813 hours x \$67 = \$54,471.

Accordingly, the Commission staff estimates the total annual cost of Form ADV-W to be \$125,846.¹⁵

13. Estimate of Total Annual Cost Burden

\$0.

14. Estimate of Cost to the Federal Government

\$0.

15. Explanation of Changes in Burden

The revised total annual collection of information burden for rule 203-2 and Form ADV-W is estimated to be 1,313 hours. This burden represents an increase of 813 hours from the current approved burden, which is attributable primarily to the 3,250 additional advisers expected to file Form ADV-W to withdraw from SEC registration as a result of the Dodd-Frank Act.¹⁶ This burden also represents a decrease of 225 hours from the burden the Commission established, and requested comment on, in the Proposing Release, which is attributable primarily to a decrease in the estimated number of investment advisers that will file Form ADV-W to withdraw from SEC registration as a result of the Dodd-Frank Act.¹⁷

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Approval to Display Expiration Date

Not applicable.

18. Exception to Certification Requirement

¹⁵ \$71,375 + \$54,471 = \$125,846.

¹⁶ 1,313 revised burden hours – 500 current approved burden hours = 813 hours.

¹⁷ 1,538 estimated hours – 1,313 revised burden hours = 225 hours.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.