

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission
“Form ADV-E”**

A. JUSTIFICATION

1. Information Collection Necessity

Rule 206(4)-2, adopted under Section 206(4) (15 U.S.C. 80b-6(4)) of the Investment Advisers Act of 1940 (the “Advisers Act”), requires certain SEC-registered investment advisers that have custody of client assets to have an independent public accountant conduct an annual surprise examination of the custodied assets.¹ The rule further requires that the independent public accountant file a certificate on Form ADV-E with the Commission within 120 days of the time chosen by the public accountant for the surprise examination.² Form ADV-E is required by the rule as a cover sheet for the certificate of accounting to facilitate the process by which the accountant files the certificate with the Commission. The rule further requires that within four business days of the resignation, dismissal, removal or other termination of the engagement, the public accountant file a Form ADV-E and accompanying statement.³

In 2009 the Commission adopted three amendments to the instructions to Form ADV-E, in connection with the amendments to rule 206(4)-2. Specifically, the instructions (i) require that the form and the accompanying accountant’s certificate be filed electronically with the Commission; (ii) reflect that the surprise examination certificate must be filed within 120 days of the time chosen by the accountant for the surprise examination; and (iii) reflect the requirement

¹ Rule 206(4)-2(a)(4) (17 CFR 275.206(4)-(2)(a)(4).

² Rule 206(4)-2(a)(4)(i).

³ Rule 206(4)-2(a)(4)(iii).

to file a termination statement along with the Form ADV-E within four business days of the public accountant's resignation, dismissal or removal.⁴

The requirement for a Form ADV-E as the accounting certificate cover page is a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3510 to 3520).⁵ Form ADV-E is necessary to facilitate the filing process for the accountant's examination certificate. It is found at 17 CFR 279.8 and is mandatory. Responses provided to the Commission are not kept confidential.

The title for the collection of information is "Form ADV-E, cover sheet for each certificate of accounting of client securities and funds in the custody of an investment adviser." The current OMB control number for this collection of information is 3235-0361. The respondents to the information collection through Form ADV-E are SEC-registered investment advisers that have custody of client funds or securities and are subject to an annual surprise examination requirement under rule 206(4)-2.

2. Information Collection Purpose

The purpose of the collection of information is to provide information for use by staff of the Commission in its examination and oversight program. Some advisory clients also may find the information useful. The accountant, upon completing the examination, must certify the results of that examination directly to the Commission. Because Form ADV-E serves as the cover page of the accounting certificate, it facilitates the filing of the certificate, and increases the

⁴ See *Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Act Release No. 2968 (Dec. 30, 2009) [75 FR 1456 (Jan. 11, 2010)].

⁵ This collection of information pertains only to the Form ADV-E filing certificate itself. The paperwork burden of obtaining the examination is separately covered by "Rule 206(4)-2 Under the Investment Advisers Act of 1940 – Custody of Funds or Securities of Clients by Investment

accessibility of the certificate to the Commission's staff and to advisory clients.

3. Consideration Given to Information Technology

Respondents will file Form ADV-E electronically through the Investment Adviser Registration Depository ("IARD") system and the form will be available to the public.

4. Duplication

The information required is not available elsewhere.

5. Effect on Small Entities

Form ADV-E does not significantly increase the regulatory burden on any investment adviser, including small entities for purposes of OMB Form 83-I.

6. Consequences of Less Frequent Collection

Form ADV-E must be filed (1) within 120 days of the time chosen by the accountant for the surprise examination and (2) upon the resignation, dismissal, removal or other termination of the accountant conducting the surprise examination. Less frequent collection would inhibit the dissemination of timely information to the Commission's staff.

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

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

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements of Form ADV-E before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to these

requests.

In addition, the Commission and the staff of the Division of Investment Management 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 confronting the industry.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Annual Time Burden

The total annual Form ADV-E compliance burden approved by OMB in 2010 was 112 hours for 2,231 responses by investment advisers that the Commission staff then estimated would be subject to the requirement of filing Form ADV-E in connection with the surprise examination and the termination statement.⁶ In reaching this estimate, the Commission estimated each respondent would spend 0.05 hour (three minutes) annually to complete Form ADV-E.

Based on current information from advisers registered with the Commission, the Commission staff now estimates that 1,248 responses will be submitted with respect to surprise

⁶ This estimate was based on 1,859 filings submitted with respect to a surprise examination and 372 filings submitted with respect to an accountant's termination.

examinations and termination of accountants pursuant to rule 206(4)-2.⁷ The Commission staff continues to estimate the burden on each adviser to be 0.05 hour annually. The total annual Form ADV-E compliance burden is therefore estimated to be 62.4 hours.⁸

The Commission staff expects that Form ADV-E will be filled out by investment advisers' compliance clerks. Based on an average salary including fringe benefits of \$60 per hour,⁹ the total cost of the information collection requirement of Form ADV-E is estimated to be approximately \$3,744.¹⁰

13. Annual Cost Burden

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

14. Federal Government Cost

Form ADV-E is designed to facilitate the filing of accountant certificates required under rule 206(4)-2. The staff devotes less time in processing accountant certificates as a result. The cost of processing Form ADV-E is insignificant.

15. Changes in Burden

As noted above, the decrease in the hour burden is attributable to a decrease in the number of SEC-registered advisers that are subject to the surprise examination requirement. As

7 This estimate is based on the number of Form ADV-E filings made with the Commission from August 1, 2011 through August 1, 2012, of which 1,222 filings were submitted with respect to a surprise examination and 26 filings were submitted with respect to an accountant's termination. These filings were submitted by 1,144 advisers, some of whom submitted multiple filings

8 $1,248 \times 0.05 = 62.4$.

9 Data from the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2011 (the "SIFMA Report"), 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 cost for a Compliance Clerk is approximately \$60 per hour.

a result, fewer advisers are required to file Form ADV-E.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable. The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.