

## **SUPPORTING STATEMENT**

### **For the Paperwork Reduction Act Information Collection Submission for Form ADV-H**

#### **A. JUSTIFICATION**

##### **1. Necessity for the Information Collection**

On September 12, 2000, the Securities and Exchange Commission (the “Commission”) approved final rules that required all SEC-registered investment advisers to file Part 1 of Form ADV electronically through the Investment Adviser Registration Depository (“IARD”).<sup>1</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. 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.

Recognizing that technological glitches occur and certain advisers may not be able to meet the electronic filing requirements, the Commission adopted rule 203-3 (17 CFR 275.203-3), which is entitled “Hardship exemptions,” along with Form ADV-H (17 CFR 279.3), under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (“Advisers Act”). Rule 203-3 permits registered advisers to request either a temporary or continuing hardship exemption on a hard copy filing of Form ADV-H. An adviser requesting a temporary hardship is required to file Form ADV-H and provide a brief explanation of the nature and extent of the temporary technical difficulties.<sup>2</sup> Form ADV-H requires an adviser requesting a continuing hardship exemption to

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<sup>1</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)].

<sup>2</sup> Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV-H is based on Form TH, which is filed by issuers relying on the temporary hardship exemption. The adviser applying for a temporary

indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.<sup>3</sup> A continuing hardship exemption is available only to a registered adviser that is a small entity.<sup>4</sup>

As part of a broader rulemaking to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), the Commission adopted rule 204-4.<sup>5</sup> Rule 204-4 requires certain advisers exempt from registration with the Commission to file reports on Form ADV electronically through the IARD.<sup>6</sup> Like rule 203-3, rule 204-4 permits these exempt reporting advisers to request a temporary hardship exemption; although unlike rule 203-3, it does not provide for a continuing hardship exemption. Under rule 204-4, exempt

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hardship exemption also is required to describe the extent to which the adviser previously submitted documents in electronic format with the same hardware and software, the burden and expense of using alternative means to submit the filing in electronic format, and any other reasons why a temporary hardship exemption is warranted.

<sup>3</sup> See Form ADV-H. The adviser applying for a continuing hardship exemption is required to indicate the reasons that the necessary hardware and software are unavailable, describe the burden and expense of using alternative means to submit the filing in electronic format, propose a time period for which the exemption would be in effect, and provide any other reasons why a continuing hardship exemption is warranted.

<sup>4</sup> For purposes of the Advisers Act, an investment adviser generally is a small entity if (a) it manages assets of less than \$25 million reported on its most recent Form ADV, (b) it does not have total assets of \$5 million or more on the last day of the most recent fiscal year end, and (c) it is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0-7.

<sup>5</sup> See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) (“Implementing Release”).

<sup>6</sup> See rule 204-4(a),(b). 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 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 IARD using the same process as registered advisers.

reporting advisers requesting a temporary hardship exemption are required to complete and file Form ADV-H.

Form ADV-H contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>7</sup> The title of this collection is “Form ADV-H under the Investment Advisers Act of 1940.” This collection of information has been approved and subsequently extended by the Office of Management and Budget (“OMB”) under control number 3235-0538. This collection of information is found at 17 CFR 279.3 and is mandatory. Responses are not kept confidential. 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 control number.

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

The purpose of this collection of information is to permit advisers to obtain a hardship exemption to not complete an electronic filing. The temporary hardship exemption that is available to registered advisers under rule 203-3 and exempt reporting advisers under rule 204-4 permits these advisers to make late filings due to unforeseen computer or software problems. The continuing hardship exemption available to registered advisers under rule 203-3 permits these advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

## **3. Consideration Given to Information Technology**

All SEC-registered investment advisers and exempt reporting advisers are required to file Part 1 of Form ADV electronically through the IARD.<sup>8</sup> The IARD is an Internet-based system that

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<sup>7</sup> 44 U.S.C. 3501 to 3520.

<sup>8</sup> *See Electronic Filing by Investment Advisers; Amendments to Form ADV*, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)] and Implementing

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 Commission and state notice filing requirements electronically.

The information collection pursuant to the rule is for the purpose of not submitting information through the IARD or other electronic means. Accordingly, the Commission's use of computer technology is inappropriate for Form ADV-H.

#### **4. Duplication**

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

#### **5. Effect on Small Entities**

Form ADV-H was specifically designed for small entities. With respect to the temporary hardship exemption filing on Form ADV-H, all advisers are treated equally. However, the continuing hardship exemption available under rule 203-3 is only available to registered advisers that are small entities. Non small-entity advisers are not granted continuing hardship exemptions. It would defeat the purpose of the rule to exempt small entities from these requirements.

#### **6. Consequences of Not Conducting Collection**

The collection of information is necessary to notify the Commission when a filer is unable to meet a filing deadline due to unforeseen technical problems. It is also necessary to enable registered advisers that are small entities to request a continuing hardship exemption from the electronic filing requirements under the Advisers Act.

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

Not applicable.

**8. Consultations Outside the Agency**

The Commission and the staff of the Division of Investment Management continue to 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.

The Commission requested public comment on these collections of information requirements before it submitted this request for extension and approval to OMB. The Commission received no comments in response to its request.

**9. Payment or Gift**

Not applicable.

**10. Confidentiality**

The information collected pursuant to the rule and form will take the form of filings with the Commission. These filings are not kept confidential.

**11. Sensitive Questions**

Form ADV-H collects information on the investment adviser's name, SEC file number, CRD number (if applicable), and business address. Form ADV-H does not collect Social Security Numbers. A System of Records Notice has been published in the Federal Register at [\(SEC-50\) 66 FR 7820](#) and can also be found at <http://www.sec.gov/about/privacy/secprivacyoffice.htm>.

## 12. Estimate of Hour Burden

Rule 203-3 requires that registered advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV-H. Rule 204-4 requires that exempt reporting advisers requesting a temporary hardship exemption submit the request on Form ADV-H. The current approved burden for Form ADV-H is 12 hours, based on an estimated 10 responses per year by registered advisers and two responses per year by exempt reporting advisers, each requiring one hour per response.

When calculating the current approved burden, we estimated that the Dodd-Frank Act amendments to the registration provisions of the Advisers Act would result in a population of 9,750 registered advisers and 2,000 exempt reporting advisers.<sup>9</sup> As of December 2, 2013, however, there are 10,950 registered advisers and 2,570 exempt reporting advisers. Based on our experience, we estimate that advisers file hardship exemptions at a rate of one response per 1,000 advisers. Accordingly, we estimate that registered advisers will file approximately 11 responses to Form ADV-H and exempt reporting advisers will file approximately three responses to Form ADV-H.<sup>10</sup> We continue to estimate that Form ADV-H will require an average of one hour to

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<sup>9</sup> 11,500 (then total SEC registered advisers) – 3,200 (estimated number of registered advisers withdrawing) + 750 (estimated number of new private fund advisers registering with the SEC) + 700 (estimated number of new SEC advisers each year) = 9,750. Section 410 of the Dodd-Frank Act amended section 203A of the Advisers Act [15 U.S.C. 80b-3A] to create a new group of “mid-sized advisers” and shift primary responsibility for their regulatory oversight to the state securities authorities. In addition, section 403 of the Dodd-Frank Act eliminated the “private adviser” exemption in section 203(b)(3) of the Advisers Act.

<sup>10</sup> 10,950 registered advisers x 1 response per 1,000 advisers = 10.95 responses; 2,570 exempt reporting x 1 response per 1,000 advisers = 2.57 responses.

complete by both registered advisers and exempt reporting advisers. As a result, we believe the burden associated with Form ADV-H will increase by two hours to 14 hours.<sup>11</sup>

Both professional staff time and clerical staff time is required to complete Form ADV-H. It is estimated that for each hour required by the form, professional staff time will comprise 0.625 hours with the remaining 0.375 hours performed by clerical staff. The Commission staff estimates the hourly wage for a compliance manager to be \$269 per hour,<sup>12</sup> and the hourly wage for general clerks to be \$53 per hour.<sup>13</sup> Accordingly, we estimate the average cost per response imposed on registered advisers and exempt reporting advisers by Form ADV-H will be \$188,<sup>14</sup> for a total annual cost of \$2,632.<sup>15</sup>

### **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**

We estimate that the burden associated with Form ADV-H will increase from 12 to 14

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<sup>11</sup> (11 responses by registered advisers x 1 hour) + (3 responses by exempt reporting advisers x 1 hour) = 14 hours. The current approved burden is 12 hours.

<sup>12</sup> Data from the SIFMA Management and Professional Earnings in the Securities Industry 2013 Report, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a compliance manager is approximately \$269 per hour.

<sup>13</sup> Data from the SIFMA Office Salaries in the Securities Industry 2013 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 General Clerk is approximately \$53 per hour.

<sup>14</sup> (0.625 hours x \$269) + (0.375 hours x \$53) = approximately \$188.

<sup>15</sup> \$188 per response x (11 responses annually by registered advisers + 3 responses annually by exempt reporting advisers) = \$2,632.

hours due to the difference between our previous estimate of the number of advisers that would be affected by the Dodd-Frank Act amendments to the Advisers Act and the actual current number of registered advisers and exempt reporting advisers. The number of hours per response has not changed since the last estimate.

**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.