

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
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 (17 CFR 275.0-2). 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. Form ADV-NR is required to be submitted by an investment adviser's non-resident general partners and non-resident managing agents in connection with the adviser’s initial Form ADV submission or within 30 days of becoming non-resident after the investment adviser submits its initial Form ADV (17 CFR 279.4).

The title of this collection of information is Rule 0-2 and Form ADV-NR 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 1995.¹ 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

¹ 44 U.S.C. 3501 to 3520.

to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser and each non-resident general partner or managing agent of an exempt reporting adviser. This collection of information is found at 17 CFR 275.0-2 and 17 CFR 279.4 and it is mandatory. Responses are not kept confidential. 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 and Use of the Information Collection

Rule 0-2 and Form ADV-NR facilitate service of process to non-resident investment advisers and exempt reporting 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 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 and to enable the commencement of legal and/or regulatory actions against investment advisers that are doing business in the United States, but are not residents.. Respondents include non-resident general partners and managing agents of registered advisers and non-resident general partners and managing agents of exempt reporting advisers.²

3. Consideration Given to Information Technology

Currently, all SEC-registered investment advisers are required to file Part 1 of Form ADV

² The Commission adopted amendments to Form ADV-NR on June 22, 2011. The amendments to Form ADV-NR reflect that, under separate rules, certain advisers exempt from registration with the Commission are required to file reports on Form ADV and must use Form ADV-NR in the same way and for the same purpose as it is currently used by registered investment advisers.

electronically through the IARD.³ The IARD is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. Exempt reporting advisers also are required 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 and non-resident exempt reporting advisers file a consent to service of process electronically on IARD.⁴ However, non-resident general partners and non-resident managing 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. 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. Investment

³ *Electronic Filing by Investment Advisers; Amendments to Form ADV*, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)]. Part 2 of Form ADV, and related rules under the Advisers Act, 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)].

⁴ 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.

advisers that manage less than \$100 million in regulatory assets under management generally are prohibited from registering with the Commission and register with state securities regulators.

6. Consequences of Not Conducting 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

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.

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

9. Payment or Gift

None.

10. 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

Form ADV-NR collects information about the investment adviser's name, SEC file number, CRD number (if applicable), and the mailing address of the non-resident general partner or non-resident managing agent of the investment adviser. Form ADV-NR 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>.

- a. No information of a sensitive nature will be required under this collection of information.
- b. The information collection collects basic Personally Identifiable Information (PII) that may include the investment adviser's name, SEC file number, CRD number (if applicable), and the mailing address of the non-resident general partner or non-resident managing agent of the investment adviser. The agency has determined that the information collection constitutes a system of record for purposes of the Privacy Act and is covered under System of Records Notice (SORN) SEC-50 "Investment Adviser Records". The SEC-50 SORN is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>. A Privacy Act Statement is applicable for the information collection and is available on the web form.
- c. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

Non-resident general partners and non-resident managing agents of SEC-registered investment advisers are required to make a one-time filing of Form ADV-NR. In addition, 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 20 hours, which is based upon an estimate of 47 annual responses at 1 hour per response. During 2016, a total of 36 registered investment advisers and exempt reporting advisers filed reports with the Commission that included a Form ADV-NR. We continue to estimate that ADV-NR requires an average of one hour to complete. Accordingly, we estimate that, based on the change in the estimate of number of filers of Form ADV-NR, the annual aggregate information collection burden for Form ADV-NR will be 36 hours, a decrease of 11 hours over the currently approved burden of 47 hours.

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 \$66 per hour, including benefits,⁵ and the hourly wage for general clerks to be \$59 per hour, including benefits.⁶ For each burden hour, compliance clerks would perform an estimated 0.75 hours, and general clerks also would perform an

⁵ Data from the SIFMA *Office Salaries in the Securities Industry 2013* report, modified by Commission staff to account for an 1,800-hour work-year and inflation, 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 \$66 per hour.

⁶ Data from the SIFMA *Office Salaries in the Securities Industry 2013* report, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a

estimated 0.25 hours. The total cost per response therefore would be an estimated \$64.25,⁷ for a total burden cost of \$2,313.⁸

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. Cost to Respondents

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

14. Cost to the Federal Government

There are no additional costs to the federal government.

15. Change in Burden

As discussed in Item 12 above, based on an analysis of Form ADV-NR filings during 2016, we estimate that Form ADV-NR will receive 36 annual responses. This will result in a decrease in the total burden hours for all respondents from an estimated 47 hours per year to an estimated 36 hours per year.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

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

General Clerk is approximately \$59 per hour.

⁷ $(0.75 \text{ hours per compliance clerk} \times \$66) + (0.25 \text{ hours per general clerk} \times \$59) = \$64.25.$

⁸ $\$64.25 \text{ per adviser} \times 36 \text{ advisers} = \$2,313.$

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.