

**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 (17 CFR 279.4) is required to be submitted by an investment adviser’s non-resident general partner and non-resident managing agent in connection with the adviser’s initial Form ADV (17 CFR 279.1) submission or within 30 days of becoming a non-resident after the investment adviser submits its initial Form ADV.¹

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

¹ Non-resident investment advisers comply with Rule 0-2 by simply executing Form ADV. The burden estimate of this is already incorporated into a separate burden estimate for Form ADV.

information” requirements within the meaning of the Paperwork Reduction Act of 1995.² 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 non-resident managing agent of an SEC-registered investment adviser and each non-resident general partner or non-resident managing agent of an exempt reporting adviser.³ 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 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.

2. Purpose and Use of the Information Collection

Rule 0-2 and Form ADV-NR facilitate service of process on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser. Form ADV-NR designates the Secretary of the Commission, among others, as the non-resident general partner’s or non-resident managing agent’s 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

² 44 U.S.C. 3501 *et seq.*

³ See Form ADV, General Instruction 19 (Who is required to file Form ADV-NR?), available at <https://www.sec.gov/about/forms/formadv-instructions.pdf>.

are not residents. Respondents include non-resident general partners and non-resident managing agents of both SEC-registered investment advisers and exempt reporting advisers.

3. Consideration Given to Information Technology

SEC-registered investment advisers and exempt reporting advisers are required to file Form ADV electronically through the IARD.⁴ 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.

Most non-resident SEC-registered investment advisers and non-resident exempt reporting advisers file a consent to service of process on Form ADV electronically through IARD.⁵ 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 SEC-registered investment advisers and exempt reporting advisers, regardless of their size, are equally subject to the collection requirements of Rule 0-2 and Form ADV-NR. If we

⁴ See 17 CFR 275.203-1 (Application for investment adviser registration); 17 CFR 275.204-1 (Amendments to Form ADV); 17 CFR 275.204-4 (Reporting by exempt reporting advisers).

⁵ See *supra* footnote 1. SEC-registered investment advisers and exempt reporting advisers may file Form ADV, including the consent to service of process, in paper format if the advisers request, and the Commission approves, a hardship exemption from electronic filing. The burden estimate for this is already incorporated into a separate burden estimate for Form ADV-H, which is the form advisers use to apply for a hardship exemption from electronic filing.

were to exempt small entities, it would be much more difficult to obtain appropriate consent from such small entities to permit the Commission and other parties to bring actions against their 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 small entities and doing business in the United States, but are not residents. Therefore, it would defeat the purpose of Rule 0-2 and Form ADV-NR to exempt small entities from the information collection requirements. The information collection requirements will not affect most investment advisers that are small entities because they are generally registered with one or more state securities authorities and not with the Commission.⁶ Investment 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 authorizes.⁷

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

⁶ Under Advisers Act Rule 0-7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) has assets under management of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year. 17 CFR 275.0-7.

⁷ See 15 U.S.C. 80b-3a.

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 Rule 0-2 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 83 FR 6892 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) "System of Records." The 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.⁸ The EDGAR PIA, published on February 5, 2020, 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 both SEC-registered investment advisers and exempt reporting advisers are required to make a one-time filing of Form ADV-NR. The currently approved collection of information burden in Form ADV-NR is 36 hours, which is based upon an estimate of 36 annual responses at one hour per response. During 2019, a total of 53 registered investment advisers and exempt reporting advisers filed reports with the Commission that included a Form ADV-NR. We continue to estimate that

⁸ Commission staff uploads Forms ADV-NR to EDGAR and makes an entry noting receipt.

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 53 hours, an increase of 17 hours over the currently approved burden of 36 hours.

An adviser would likely use a combination of compliance clerks and general clerks to complete Form ADV-NR and file it with the Commission. The Commission staff estimates the hourly wage for compliance clerks to be \$71 per hour, including benefits,⁹ and the hourly wage for general clerks to be \$63 per hour, including benefits.¹⁰ For each burden hour, compliance clerks would perform an estimated 0.75 hours, and general clerks also would perform an estimated 0.25 hours. Therefore, the total cost per response would be an estimated \$69,¹¹ for a total burden cost of \$3,657.¹²

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.

⁹ 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 compliance clerk is approximately \$71 per hour.

¹⁰ 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 \$63 per hour.

¹¹ $(0.75 \text{ hours per compliance clerk} \times \$71) + (0.25 \text{ hours per general clerk} \times \$63) = \$69.$

¹² $\$69 \text{ per adviser} \times 53 \text{ advisers} = \$3,657.$

**Summary of the Annual Number of Responses,
Time Burden, and Monetized Time Burden**

Description	Requested	Previously Approved	Change
Number of Responses	53	36	17
Time Burden (Hours)	53	36	17
Monetized Time Burden (Dollars) ¹³	\$3,657	\$2,313	\$1,344

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

The revised total annual collection of information burden for Rule 0-2 and Form ADV-NR is estimated to be 53 hours. This burden represents an increase of 17 hours from the current approved burden of 36 hours, which is attributable primarily to the fact that more investment advisers have filed Form ADV-NR in recent staff experience.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

¹³ See *supra* footnotes 9 through 12, and accompanying text.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.