

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”).¹ 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.² Form ADV-H requires an adviser requesting a continuing hardship exemption to

¹ *Electronic Filing by Investment Advisers; Amendments to Form ADV*, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

² Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship

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

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 204-4.⁵ Rule 204-4 requires certain advisers exempt from registration with the Commission to file reports on Form ADV electronically through the IARD.⁶ Like rule 203-3, rule 204-4 permits

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 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.

³ 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.

⁴ 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.

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

⁶ 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.

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 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 1995.⁷ 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

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44 U.S.C. 3501 to 3520.

Part 1 of Form ADV electronically through the IARD.⁸ 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.

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

⁸ 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 Release.

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. 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 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>.

- a. No information of a sensitive nature, including social security numbers, 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 business address. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier.
- 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 1/29/2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

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 3 hours, based on an estimated 2 responses per year by registered advisers and 1 response per year by an exempt reporting adviser, each requiring one hour per response.

When calculating the current approved burden, there were 12,276 registered advisers and 3,558 exempt reporting advisers.⁹ As of March 16, 2020, there are 13,540 registered advisers and 4,313 exempt reporting advisers. During the most recent calendar year, the Commission received 15 temporary hardship exemption filings and 1 continuing hardship exemption filing on Form ADV-H from both registered advisers and exempt reporting advisers. Accordingly, we estimate that registered advisers and exempt reporting advisers will file approximately 15 responses to Form ADV-H and exempt reporting advisers will file approximately 1 response to Form ADV-H.¹⁰ We continue to estimate that Form ADV-H will require an average of one hour to complete by both registered advisers and exempt reporting advisers. As a result, we believe the burden associated with Form ADV-H will increase by 3 hours to 16 hours.¹¹

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 \$312 per hour,¹² and the hourly wage for general clerks to be \$63 per hour.¹³ Accordingly, we estimate the average cost per response

⁹ As of March 31, 2017.

¹⁰ We are calculating the burden based on the number of responses we have received on an annual basis.

¹¹ $(15 \text{ responses by registered advisers and exempt reporting advisers} \times 1 \text{ hour}) + (1 \text{ response by exempt reporting adviser} \times 1 \text{ hour}) = 16 \text{ hours}$. The current approved burden is 3 hours.

¹² Data from the SIFMA *Management & Professional Earnings in the Securities Industry 2013* report, modified by Commission staff to account for an 1,800-hour work-year and inflation, 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 \$312 per hour.

¹³ 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 5.35 to

imposed on registered advisers and exempt reporting advisers by Form ADV-H will be approximately \$219,¹⁴ for a total annual cost of \$3,504.¹⁵

IC	IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
		Previously approved	Requested	Change	Previously approved	Requested	Change	Previously approved	Requested	Change
IC1	Recordkeeping	2 responses registered adviser 1 response per exempt	15 responses per exempt adviser 1 response per exempt adviser	13	3	16	13	0	0	0
Total for all ICs		3	16	13	3	16	13	0	0	0

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

We estimate that the burden associated with Form ADV-H will increase from 3 to 16 hours due to the difference between our previous estimate of the number of Form ADV-H filings that are made annually and the actual number of such filings made during the most recently completed calendar year. The number of hours per response has not changed since the last estimate.

16. Information Collection Planned for Statistical Purposes

Not applicable.

account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a General Clerk is approximately \$63 per hour.

¹⁴ (0.625 hours x \$312) + (0.375 hours x \$63) = approximately \$219.

¹⁵ \$219 per response x (15 responses annually by registered advisers and exempt reporting advisers + 1 response annually by exempt reporting advisers) = \$3,504.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exception to Certification Statement for Paperwork Reduction Act

Submission

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.