

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
FOR AMENDMENTS TO FORM ADV
UNDER THE INVESTMENT ADVISERS ACT OF 1940
(17 CFR 279.1)**

A. JUSTIFICATION

1. Necessity for the Information Collection

Form ADV is a three-part investment adviser form. Part 1 of Form ADV contains information used primarily by the Securities and Exchange Commission (“Commission”) staff and Part 2 is the client brochure. Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser’s website (if it has one), and deliver to retail investors a relationship summary.

The Commission uses the information in Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use the information required in Form ADV to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs. Rule 203-1¹ under the Investment Advisers Act of 1940 (“Advisers Act”)² requires every person applying for investment adviser registration with the Commission to file Form ADV.³ Rule 204-4⁴ under the Advisers Act requires certain investment advisers exempt from registration with the Commission (“exempt reporting advisers”) to file reports with the Commission by completing a limited number of items on Form

¹ 17 CFR 275.203-1.

² 15 U.S.C 80b-4.

³ 17 CFR 279.1.

⁴ 17 CFR 275.204-4.

ADV. Rule 204-1⁵ under the Advisers Act requires any adviser that is required to complete Form ADV to update the form at least annually, including exempt reporting advisers that report to the Commission pursuant to rule 204-4 and requires advisers to submit electronic filings through the Investment Adviser Registration Depository (“IARD”). The paperwork burdens associated with rules 203-1, 204-1, and 204-4, as well as the obligation to deliver codes of ethics to clients under rule 204A-1, are included in the approved annual burden associated with Form ADV and thus do not entail a separate collection of information.

On December 22, 2020, the Commission adopted an amended rule, rule 206(4)-1, under the Advisers Act, which addresses advisers marketing their services to clients and investors (the “marketing rule”).⁶ The marketing rule amends existing rule 206(4)-1 (the “advertising rule”), which we adopted in 1961 to target advertising practices that the Commission believed were likely to be misleading.⁷ The rule also replaces rule 206(4)-3 (the “solicitation rule”), which we adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest.⁸ The amendments create a merged rule that replaces both the current advertising and cash solicitation rules. These amendments reflect market developments and regulatory changes since the rules’

⁵ 17 CFR 275.204-1.

⁶ Investment Adviser Marketing, Release No. IA-5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (the “Adopting Release”).

⁷ 17 CFR § 275.206(4)-1. *See also* Advertisements by Investment Advisers, Release No. IA-121 (Nov. 1, 1961) [26 FR 10548 (Nov. 9, 1961)].

⁸ 17 CFR § 275.206(4)-3. *See also* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Release No. 688 (July 12, 1979) [44 FR 42126 (Jul 18, 1979)].

adoptions. The Commission also proposed amendments under the Advisers Act to Form ADV to collect additional information about advisers' marketing practices.

In connection with the final amended marketing rule, the Commission adopted amendments to Form ADV to add a subsection L to Item 5 of Part 1A ("Marketing Activities") to require information about an adviser's use in its advertisements of testimonials, endorsements, third-party ratings, and previous investment advice. Specifically, we will require an adviser to state whether any of its advertisements include performance results, hypothetical performance, or predecessor performance. We will also require an adviser to state whether any of its advertisements includes testimonials, endorsements, or a third-party rating, and if so, whether the adviser pays or otherwise provides cash or non-cash compensation, directly or indirectly, in connection with their use. Finally, we will require an adviser to state whether any of its advertisements includes a reference to specific investment advice provided by the adviser. We did not adopt amendments to Form ADV Parts 2 or 3.

Form ADV contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.⁹ The amendments to Form ADV related to the amended marketing rule contain collections of information. The collection of information is necessary to improve information available to us and to the general public about advisers' advertising practices. Our staff will use this information to help prepare for examinations of investment advisers. This information will be particularly useful for staff in reviewing an adviser's compliance with the marketing rule, including

⁹ 44 U.S.C. 3501 to 3520.

the restrictions and conditions on advisers' use in advertisements of performance presentations and third-party statements. Responses are not kept confidential.

The title of this collection of information is: "Form ADV under the Investment Advisers Act of 1940" and the Commission previously submitted this collection to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved, and subsequently extended, this collection under control number 3235-0049 (expiring on November 30, 2023). 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 OMB control number. The paperwork burdens associated with rules 203-1, 204-1, 204A-1, and 204-4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. These collections of information are found at 17 CFR 275.203-1, 275.204-1, 275.204-4, 275.204A-1, and 279.1 (Form ADV itself) and are mandatory.

The respondents are investment advisers registered with the Commission or applying for registration with the Commission or exempt reporting advisers.

2. Purpose and Use of the Information Collection

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about an adviser, and its business, conflicts of interest and personnel. We use the information to determine eligibility for registration with us and to manage our regulatory, examination, and enforcement programs. Clients use certain of the information to determine whether to hire an adviser and, if hired, how to manage that relationship.

This collection of information is found at 17 CFR 275.203-1, 275.204-1, 275.204-4, 275.204A-1, and 275.279.1, and it is mandatory. Responses are not kept confidential. The majority of the respondents to the Form ADV collection of information are investment advisers registered with the Commission or applying for registration with the Commission while the additional respondents to the Form ADV collection of information are exempt reporting advisers. The information collected takes the form of disclosures to respondents' clients, potential clients, and the Commission.

3. Consideration Given to Information Technology

The information collected pursuant to Form ADV takes the form of disclosures made by investment advisers to their clients and potential clients and reporting to the Commission. Investment advisers currently file their Form ADV electronically on the IARD system. This method of collecting information reduces the regulatory burden upon investment advisers by permitting them to file applications for registration, and amendments thereto, at one central location, rather than filing Form ADV separately with the Commission and the states for notice filing purposes.

Exempt reporting advisers are subject to reporting, but not registration requirements and must submit their reports through the IARD using the same process as registered investment advisers. Because exempt reporting advisers may be required to register on Form ADV with one or more state securities authorities, use of the existing form and filing system permits these advisers to satisfy both state and Commission requirements with a single electronic filing. Our approach permits an adviser to transition from filing reports with us to applying for registration under the Act by simply amending its Form ADV; the adviser would check the box to indicate it is filing an initial

application for registration, complete the items it did not have to answer as an exempt reporting adviser, and update the pre-populated items that it already has on file.

4. Duplication

The collection of information requirements of the form, including the amendments to the form, are not duplicated elsewhere. While Form ADV Part 3 requires firms to summarize topics also required to be discussed in Form ADV Part 1 or Part 2, Form ADV Part 3 has a distinct purpose to help retail investors select or determine whether to remain with a firm or financial professional by providing better transparency and summarizing in one place selected information about a particular investment adviser. The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates these requirements whenever it adopts amendments to its rules.

5. Effect on Small Entities

The requirements of Form ADV, including the amendments, are the same for all investment advisers registered with the Commission, and they are the same for all exempt reporting advisers, including (in both cases) those advisers that are small entities. Investment advisers with less than \$100 million in assets under management generally are not permitted to register with the Commission and must register with state securities authorities. Because the protections of the Advisers Act are intended to apply equally to retail investor clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the new requirements. The Commission reviews all rules periodically, as required by the

Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Not Conducting Collection

The collection of information required by the form is necessary to protect investors by providing clients and potential clients, as well as the Commission, with information about the adviser, and its business, conflicts of interest and personnel. The consequences of not collecting this information would be that clients and prospective clients may not have the information they need in order to evaluate the adviser's business practices and to determine whether to hire an adviser and, if hired, how to manage that relationship. In addition, if the information is either not collected or is collected less frequently, the Commission's ability to protect investors would be reduced.

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

Not applicable.

8. Consultation With Persons Outside the Agency

In its release proposing to amend the advertising, cash solicitation, and recordkeeping rules, and Form ADV, the Commission requested public comment on the effect of information collections under these amendments. We published notice soliciting comments on the collection of information requirements in the 2019 Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission's solicitation of public comments included estimating and requesting public comments on updated burden estimates for all information collections under this OMB control number

(i.e., both changes associated with the rulemaking and other burden updates). We received one comment about the Form ADV burden, which we address below.

9. Payment or Gift

None.

10. Confidentiality

The assurance of information collected pursuant to Form ADV is through filings with the Commission. These disclosures are not kept confidential.

11. Sensitive Questions

a. No information of a sensitive nature will be required under this collection of information. The IARD system contains an embedded check which prevents individuals' social security numbers from being subject to public view.

b. The information collection collects basic Personally Identifiable Information (PII) that may include names, dates of birth and social security numbers (the social security numbers are screened from public view). 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 Investment Adviser Records 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 paper form and web platform.

c. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the IARD system, in

connection with this collection of information. The IARD PIA, published on July 8, 2014, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

Form ADV collects Personally Identifiable Information (PII). Form ADV requires filers to provide names, dates of birth and social security numbers (the social security numbers are screened from public view). The IARD system contains an embedded check which prevents individuals from providing social security numbers. All individuals (and entities other than trusts) are required to obtain CRD numbers, which do not constitute PII. Such collection and usage is necessary for verification purposes. Commission staff uses this information for positive verification of individuals and entities. Alternative identities are used for all individuals and entities other than trusts because a social security number is the only identifier available to them. The Commission complies with section 7 of the Privacy Act of 1974 because the Advisers Act authorizes the Commission to collect this information on Form ADV from advisers.¹⁰ Filing Form ADV is mandatory. A System of Records Notice has been published in the Federal Register at 66 FR 7820. It, along with instructions on how to obtain the applicable Privacy Impact Assessment, can be found at: <http://www.sec.gov/about/privacy/secprivacyoffice.htm>.

12. Burden of Information Collection

The currently approved total annual burden estimate for all advisers completing, amending, and filing Form ADV (Part 1, Part 2, and Part 3) with the Commission,

¹⁰ See 15 U.S.C. §§ 80b-3 and 80b-4.

including private fund reporting, plus the burden associated with amendments to the form, preparing brochure supplements and relationship summaries, and delivering codes of ethics to clients, is estimated to be approximately 383,652 hours per year, for a monetized time burden of \$105,457,126.¹¹ This consists of an average annual burden of 27.06 hours for each of the estimated 13,500 SEC registered advisers, and 4.28 hours for each of the estimated 4,300 exempt reporting advisers.¹²

The respondents to current Form ADV are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers.¹³ Based on the IARD system data as of August 1, 2020, approximately 13,724 investment advisers were registered with the Commission, and 4,455 exempt reporting advisers file reports with the Commission. The amendments to Form ADV will increase the information requested in Form ADV Part 1A for registered investment advisers. Because exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV, which excludes Item 5, they will not be subject to these

¹¹ See Updated Supporting Statement for PRA Submission for Amendments to Form ADV Under the Investment Advisers Act of 1940 (the “Approved Form ADV PRA”).

¹² See *id.*

¹³ An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds or 203(m) of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than \$150 million.

amendments and will therefore not be subject to this collection of information.¹⁴ However, these exempt reporting advisers are included in the PRA for purposes of updating the overall Form ADV information collection. In addition, as noted above, in 2019 the Commission adopted amendments to Form ADV to add a new Part 3, requiring registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary.¹⁵ The burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection.¹⁶

As a result of the proposed amendments to Form ADV Part 1A discussed above, we estimate that the average total annual collection of information burden for registered investment advisers will increase 0.5 hours to 27.56 hours¹⁷ per registered investment adviser per year for Form ADV, for 378,233.44 aggregate hours for registered advisers per year (not including our estimate for new advisers to register with us annually, as discussed and incorporated below).¹⁸ We continue to believe, based on IARD system

¹⁴ An exempt reporting adviser is not a registered investment adviser and therefore will not be subject to the amendments to Item 5 of Form ADV Part 1A. Exempt reporting advisers are required to complete a limited number of items in Form ADV Part 1A (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules), and are not required to complete Part 2.

¹⁵ See Form CRS Relationship Summary; Amendments to Form ADV, Release No. IA-5247 (June 5, 2019) [84 FR 33492 (Jul. 12, 2019)].

¹⁶ See Approved Form ADV PRA.

¹⁷ 27.06 approved hours + .5 additional hours = 27.56 hours.

¹⁸ 27.56 hours x 13,724 registered advisers = 378,233.44 hours

data, that that 1,227 new advisers will register with us annually. Based on updated IARD system data as of August 1, 2020, we estimate that the number of exempt reporting advisers is 4,455; however, we continue to believe that, based on IARD system data, there would be 441 new exempt reporting advisers annually. We do not expect that the amendments will increase or decrease the currently approved total burden estimate of 4.28 hours per exempt reporting adviser completing Form ADV, for 19,067.4 aggregate hours for exempt reporting advisers per year (not including our estimate for new exempt reporting advisers annually, as discussed and incorporated below).¹⁹ We are not modifying our estimate, from our proposal, of .5 hours for registered investment advisers to complete the new information we adopted pursuant to the amendment to Form ADV. Although one commenter claimed that we underestimated the Form ADV burden, this commenter mischaracterized our statements in the proposal.²⁰ We stated in the proposal that the Form ADV amendments would not increase the time required to complete the form for *exempt reporting advisers* (not registered investment advisers), which we continue to believe is the case.

Factoring in the new questions on Part 1 of Form ADV that will be required for all registered investment advisers (but not for exempt reporting advisers), and increases due to increased number in RIAs and ERAs since the burden estimate was last approved, the revised annual aggregate burden hours for Form ADV (Parts 1, 2 and 3) for all

¹⁹ 4.28 hours x 4,455 exempt reporting advisers = 19,067.4 hours

²⁰ In the proposal, we estimated that the amendments would not change the burden for exempt reporting advisers because they will not be required to complete the new portion of Form ADV.

registered advisers and exempt reporting advisers will be 433,004.44²¹ hours per year, with a monetized value of \$118,210,212.1.²² This will be an aggregate increase of 49,352 hours,²³ or \$12,753,086.12²⁴ in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates, increases which are attributed to the factors described above.

| IC | Amndments to Form ADV under the Investment Advisers Act of 1940 | Annual No. of Responses | | | Annual Time Burden (Hrs.) | | | Monetized Time Burden (\$) | | |
|---------------------|---|-------------------------|-------------------------------------|---------------|---------------------------|-------------------------------------|----------------|----------------------------|-------------------------------------|---------------------|
| | | Previously approved | Requested Change Due to New Statute | Total | Previously approved | Requested Change Due to New Statute | Total | Previously approved | Requested Change Due to New Statute | Total |
| IC1 | Initial Preparation and Filing of Advertising Activities Items | 17,800 | 379 | 18,179 | 383,652 | 49,352 | 433,004 | \$13,822,388 | 302,695 | \$14,125,083 |
| Total for IC | | 17,800 | 379 | 18,179 | 383,652 | 49,352 | 433,004 | \$13,822,388 | 302,695 | \$14,125,083 |

²¹ 433,004.44 aggregate annual hour burden is the sum of: ((i) 27.56 hours x (13,724 RIAs + 1,227 expected newly registered RIAs annually) = 412,049.56 total aggregate annual hour burden for RIAs; and (ii) 4.28 hours x (4,455 + 441 expected new ERAs annually) = 20,954.88 total aggregate annual hour burden for ERAs).

²² We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are \$237 and \$309 per hour, respectively. The hourly wages used are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Therefore: (216502.22 hours x \$237) + (216502.22 hours x \$309) = \$118,210,212.1.

²³ 433,004.44 hours - 383,652 hours = 49,352 hours.

²⁴ \$118,210,212.1 (new estimated monetized value of the hour burden total for all advisers) - \$105,457,126 (currently approved monetized value of the hour burden total for all advisers) = \$12,753,086.12

13. Cost to Respondents

The currently approved annual cost burden for Form ADV is \$13,822,389, or \$777 per adviser.²⁵ We do not estimate any additional change due to the adopted amendments discussed above. However, due to the differences in numbers of advisers since the previously approved PRA, we estimate that the total annual cost burden for Form ADV is \$14,125,083.²⁶

14. Cost to the Federal Government

There are no costs to the government directly attributable to Form ADV.

15. Change in Burden

We estimate that amendments to Form ADV, will result in a revised annual aggregate burden hours for Form ADV (Parts 1, 2 and 3) for all registered advisers and exempt reporting advisers would be 433,004.44 hours per year, with a monetized value of \$118,210,212.1.²⁷ This would be an aggregate increase of 49,352 hours, or \$12,753,086.12 in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates.²⁸ These increases are the result of the addition of the

²⁵ See Approved Form ADV PRA (describing the external cost burden as \$777 per adviser). Given the closeness in time between the most recently approved ADV PRA and the supporting data in this submission, we did not adjust the cost for inflation.

²⁶ \$777 previously approved burden per adviser * 18,179 advisers = \$14,125,083.

²⁷ See *supra* notes 21 and 22.

²⁸ See *supra* notes 23 and 24.

adopted subsection L to Item 5 regarding Marketing Activities (the “Marketing Activities Questions”) and changes in the adviser population discussed above. We do not estimate any change to approved external costs to respondents. We have updated the estimated number of respondents to this information collection based upon updated data.²⁹ We have updated the information burden estimates based on updates to the rule from the proposal to the adoption, as described below.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of this form will result in increased costs, because the need to make changes to the form may not follow the application’s scheduled version release dates.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

²⁹ See Adopting Release, *supra* footnote 1, at text following footnote 1042.

**B. COLLECTIONS OF INFORMATION EMPLOYING
STATISTICAL METHODS**

Not applicable.