

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) designates the Secretary, among others, as the non-resident general partner’s or non-resident managing agent’s agent for service of process.¹ Form ADV-NR must 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 submission or within 30 days of becoming a non-resident after the investment adviser submits its initial Form ADV.

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 (17 CFR 279.1). This burden estimate is 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.

On November 4, 2021, the Commission proposed to amend Form ADV-NR to require an investment adviser’s non-resident general partners and non-resident managing agents to file Form ADV-NR electronically through the Investment Adviser Registration Depository (“IARD”), rather than in paper format, as is currently required.⁴ As part of the proposed amendments, the IARD would be modified to permit non-resident general partners and non-

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>.

⁴ *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, Advisers Act Release No. 5903 (Nov. 4, 2021) (“Proposing Release”).

resident managing agents to meet this filing requirement electronically without the need for specialized software or hardware. In addition, IARD would not charge a separate fee for filing the Form ADV-NR or accessing the filing system apart from what IARD charges for filing Form ADV.

The Commission also proposed to amend Form ADV-NR to require non-resident general partners and non-resident managing agents to amend their Form ADV-NR within 30 days whenever any information contained in the form becomes inaccurate by filing with the Commission a new Form ADV-NR. The current form does not specify when a new Form ADV-NR becomes inaccurate.

2. Purpose and Use of the Information Collection

Rule 0-2 and Form ADV-NR facilitate service of process on a non-resident general partner or non-resident managing agent of an investment adviser. Form ADV-NR designates the Secretary, among others, as the agency for service of process for non-resident general partners or non-resident managing agents. 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 non-resident managing agents of both SEC-registered investment advisers and exempt reporting advisers.

3. Consideration Given to Information Technology

The proposed amendments would require an investment adviser's non-resident general partners and non-resident managing agents to file Form ADV-NR electronically through the

IARD, rather than in paper format, as is currently required. 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.

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 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.⁵ Investment advisers that manage less than \$100 million

⁵ 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.

in regulatory assets under management generally are prohibited from registering with the Commission and register with state securities authorizes.⁶

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 an agent for service of process, 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 requested public comment on the proposed amendments to the collection of information requirements in Form ADV-NR.⁷ Comments are due 30 days after publication in the *Federal Register*. 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.

9. Payment or Gift

None.

⁶ See 15 U.S.C. 80b-3a.

⁷ See Proposing Release, *supra* footnote 4.

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. The proposed amendments would require Form ADV-NR to be filed through IARD, rather than in paper format, as is currently required. 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>.

12. Burden of Information Collection

We estimate that with the proposed amendments, Form ADV-NR would take an average of one hour to complete, which is the same as our current time burden estimate. The currently approved collection of information burden in Form ADV-NR is 53 hours, which is based on our prior estimate of 53 annual responses at 1 hour per response. During 2018 to 2020 period, a total of 147 registered investment advisers and exempt reporting advisers filed reports with the Commission that included a Form ADV-NR, for an average of 49 reports per year.⁸ 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 49 hours, a decrease of 4 hours under the currently approved burden of 53 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 through IARD. The Commission staff estimates the hourly wage for compliance clerks⁹ to be \$71 per hour, including benefits,⁹ and the

⁸ The number of Form ADV-NRs filed between 2018 and 2020 were as follows: for 2020 there were 5 filings; for 2019 there were 53 filings; and for 2018 there were 89 filings. Three year average: $(5 + 53 + 89) / 3 = 49$.

⁹ Data from the SIFMA *Office Salaries in the Securities Industry 2013* report, modified by Commission staff to account for a 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.

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 \$3,381.¹²

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

Description	Requested	Previously Approved	Change
Number of Responses	49	53	(4)
Time burden (Hours)	49	53	(4)
Monetized Time Burden (Dollars) ¹	\$3,381	\$3,657	\$(276)

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 revised total annual collection of information burden for Rule 0-2 and Form ADV-NR would be 49 hours, which is a decrease of 4 hours from the current approved

¹⁰ Data from the SIFMA *Office Salaries in the Securities Industry 2013* report, modified by Commission staff to account for a 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 hours per compliance clerk x \$71) + (0.25 hours per general clerk x \$63) = \$69.

¹² \$69 per adviser x 49 advisers = \$3,381.

burden of 53 hours. This decrease appears to be primarily due to using updated data, which shows that less persons have filed Form ADV-NR.

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.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.