

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 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 June 23, 2022, the Commission adopted amendments to 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 was previously required.⁴ As part of the amendments, the IARD will be modified to permit non-resident general partners and non-resident managing agents to meet this filing requirement electronically without the need for specialized software or

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. 6056 (June 23, 2022) (“Adopting Release”).

hardware. No fee will be assessed for filing Form ADV-NR through IARD.

The Commission also amended 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.

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 final rules 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 was previously 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 generally are registered with one or more state securities authorities and not with the Commission.⁵ 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 authorities.⁶

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.

⁶ See 15 U.S.C. 80b-3a.

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's solicitation of public comments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (*i.e.*, both changes associated with the rulemaking and other burden updates).⁷ The Commission received comments on the proposed amendments, which it discussed in the Adopting Release; however, none of the comments concerned the proposed burden estimates.⁸ 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.

⁷ 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) [86 FR 64839 (Nov. 19, 2021)]. Comment letters are *available at* <https://www.sec.gov/comments/s7-15-21/s71521.htm>.

⁸ See Adopting Release, *supra* footnote 4.

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. The final rules require Form ADV-NR to be filed through IARD, rather than in

paper format, as was previously 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 March 20, 2022, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

We are updating the burden estimates to reflect more recent data. We continue to estimate that final Form ADV-NR will require an average of one hour to complete, which is the same as the previously approved estimate.⁹ Taking into account more recent data from 2019 to 2021, the Commission received an average of 21 Form ADV-NR filings per year, which represents a decrease of 32 responses from the previously approved 53 responses.¹⁰ Accordingly, as each response takes an average of one hour to complete, we estimate that the aggregate annual time burden for Form ADV-NR will be 21 hours, which represents a decrease of 32 hours from the previously approved burden of 53 hours.¹¹

We are updating the estimated monetized cost burden to reflect more recent wage estimates for 2022.¹² Form ADV-NR filers will likely use a combination of compliance clerks

⁹ For the previously approved estimates, see ICR Reference No. 202004-3235-022 (conclusion date Sept. 28, 2020), *available at* https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202004-3235-022.

¹⁰ (53 filings in 2019 + 5 filings in 2020 + 4 filings in 2021 = 62 filings) / 3 years = an average of 20.66 filings a year, rounded to 21 filings a year.

¹¹ (21 annual responses x 1 hour per response = an aggregate annual time burden of 21 hours.)

¹² The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

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 clerks to be \$77 per hour, and the hourly wage for general clerks to be \$68 per hour. For each burden hour, compliance clerks will perform an estimated 0.75 hours, and general clerks will perform an estimated 0.25 hours. Therefore, we estimate the monetized time burden per response to be \$75,¹³ for an aggregate monetized time burden of \$1,575.¹⁴ This represents a decrease of \$2,082 from the previously approved monetized time burden of \$3,657.

Table 1: Summary of the Aggregate Annual Number of Responses, Time Burden, Monetized Time Burden, and External Cost Burden

Description	Requested	Previously Approved	Change
Number of Responses	21	53	(32)
Time Burden (hours)	21	53	(32)
Monetized Time Burden (Dollars)	\$1,575	\$3,657	\$(2,082)
External Cost Burden (Dollars) ¹⁵	\$0	\$0	\$0

13. Cost to Respondents

We continue to estimate that there will be no external cost burdens, as previously approved. The amendments will require an investment adviser’s non-resident general partners and non-resident managing agents to file Form ADV-NR electronically through IARD. Form ADV-NR filers will be able to meet this filing requirement without needing any specialized

¹³ (0.75 hours per compliance clerk x \$77 an hour) + (0.25 hours per general clerk x \$68 an hour) = \$74.75, rounded to \$75.

¹⁴ \$75 per adviser x 21 advisers = \$1,575.

¹⁵ See *infra* Item 13 (Cost to Respondents).

software or hardware. No fee will be assessed for filing Form ADV-NR through IARD.

14. Cost to the Federal Government

There are no additional costs to the federal government.

15. Change in Burden

We estimate that the aggregated annual number of responses would be 21 responses, which is a decrease of 32 responses from the previously approved estimate of 53 responses. We estimate that the aggregate annual time burden would be 21 hours, which is a decrease of 32 hours from the previously approved estimate of 53 hours. We estimate that the aggregate annual monetized time burden would be \$1,575, which is a decrease of \$2,082 from the previously approved estimate of \$3,657. The decreases appear to be due to using updated data, which show that less persons have filed Form ADV-NR. These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

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.