

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 204-2

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 204 of the Investment Advisers Act of 1940 (“Advisers Act”)¹ provides that investment advisers required to register with the Securities and Exchange Commission (the “Commission” or the “SEC”) must make and keep certain records for prescribed periods, and make and disseminate certain reports. Advisers Act rule 204-2 (or the “Rule”) sets forth mandatory requirements for maintaining and preserving specified books and records.² The records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years.³ These requirements constitute a mandatory “collection of information,” within the meaning of the Paperwork Reduction Act. The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. The collection has been previously approved and subsequently extended under Office of Management and Budget (“OMB”) control number 3235-0278, and it is found at 17 CFR 275.204-2. 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 number.

2. Purpose and Use of the Information Collection

¹ 15 U.S.C 80b-4.

² 17 CFR 275.204-2.

³ See rule 204-2(e) (17 CFR 275.204-2(e)). The standard retention period required for books and records under rule 204-2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser.

The purpose of the information collection in rule 204-2 is to assist the Commission's examination and oversight program in determining compliance with the Advisers Act and corresponding rules. The respondents are investment advisers registered with the Commission. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.⁴

3. Consideration Given to Information Technology

The Commission's use of computer technology in connection with this information collection, which has been previously approved by OMB, would not change. The Commission currently permits advisers to maintain records required by the rule through electronic media.⁵

4. Duplication

The collection of information requirements of the Rule are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of the Rule are the same for all investment advisers registered with the Commission, including those that are small entities. OMB has previously approved the effect of this collection on all investment advisers in general, including advisers that are small entities. Moreover, it would defeat the purpose of the rule to exempt small entities from these requirements.

⁴ See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

⁵ See *Electronic Recordkeeping by Investment Companies and Investment Advisers*, Investment Advisers Act Release No. 1945 (May 24, 2001) 66 FR 29224 (May 30, 2001)

6. Consequences of Not Conducting Collection

Less frequent information collection would be incompatible with the objectives of the rule and could hinder the Commission's oversight and examination program for investment advisers and thereby reduce the protection to investors.

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

The collection requirements under Rule 204-2 generally require advisers to maintain documents for five years, and in some cases longer.⁶ Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), OMB has previously approved the collection with this retention period. The retention periods in Rule 204-2 are warranted because the recordkeeping requirements in rule 204-2 of the Advisers Act are designed to contribute to the effectiveness of the Commission's examination and inspection program. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the entire period between examinations.

8. Consultations 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 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 these collections of information requirements before it submitted this request for extension and approval to OMB.

⁶ See *supra* note 3.

The Commission received no comments in response to its request.

9. Payment or Gift

None.

10. Confidentiality

Responses provided to the Commission pursuant to Rule 204-2 in the context of the Commission's examination and oversight program are generally kept confidential.⁷

11. Sensitive Questions

None/ No PII collected.

12. Burden of Information Collection

The total annual collection of information burden currently approved by OMB for rule 204-2 is 1,769,138 hours. This currently approved annual aggregate burden is based on an estimate of 9,750 registered advisers, or approximately 181.45 hours per registered adviser.⁸

As of December 2, 2013, there were 10,946 SEC registered advisers required to maintain copies of certain books and records relating to their advisory business. This is an increase of 1,196 SEC registered advisers over the previously approved burden. Therefore we estimate that the total burden under rule 204-2 will increase by 217,014 hours⁹ for a total of 1,986,152 hours.¹⁰

An adviser will likely use a combination of compliance clerks and general clerks to make and keep the information and records required under the rule. The Commission staff estimates

⁷ See *supra* note 4.

⁸ 9,750 registered advisers x 181.45 hours per adviser = 1,769,138 hours.

⁹ 1,196 registered advisers x 181.45 hours per adviser = 217,014 hours.

¹⁰ 10,946 registered advisers x 181.45 hours per adviser = 1,986,152 hours.

the hourly wage for compliance clerks to be \$63 per hour, including benefits, and the hourly wage for general clerks to be \$53 per hour, including benefits.¹¹ For each adviser, 181.45 burden hours will be required to make and keep the information and records required under the rule. We anticipate that compliance clerks will perform an estimated 31.45 hours of this work, and clerical staff will perform the remaining 150.0 hours. The total cost per respondent therefore will be an estimated \$9,931.35,¹² for a total burden cost of \$108,708,557.10.¹³

13. Costs to Respondents

There is no cost burden other than the cost of the hour burden described above.

14. Costs to Federal Government

There are no additional costs to the federal government directly attributable to rule 204-2.

15. Changes in Burden

We estimate that the total burden hour associated with rule 204-2 will increase from 1,769,138 hours per year to 1,986,152 hours per year because we have increased our estimate of the number of respondents subject to the rule. The number of hours per response has not changed since the last estimate. We find that the non-hour burden associated with rule 204-2 will decrease as we currently estimate it to be \$0.

16. Information Collection Planned for Statistical Purposes

¹¹ Our hourly wage rate estimate for a compliance manager and compliance clerk is based on data from the Securities Industry Financial Markets Association's Office Salaries in the Securities Industry 2012, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93, for compliance clerks to account for bonuses, firm size, employee benefits and overhead.

¹² (31.45 hours per compliance clerk x \$63) + (150.0 hours per clerical staff x \$53) (\$1,981.35 + \$7,950.00) = \$9,931.35.

¹³ \$9,931.35 per adviser x 10,946 advisers = \$108,708,557.10.

None.

17. Approval to Omit OMB Expiration Date

Not Applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not Applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.