

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION PROPOSAL TO AMEND RULE
204-2 UNDER THE ADVISERS ACT**

A. JUSTIFICATION

1. Necessity for the Information Collection

On May 20, 2015, the Securities and Exchange Commission (the “Commission” or “SEC”) issued a release proposing amendments to Part 1A of Form ADV as well as rule 204-2 (or the “Rule”) under the Investment Advisers Act of 1940 (the “Advisers Act” or “Act”).¹ The proposed amendments to rule 204-2 would require investment advisers to make and keep records that are necessary to demonstrate the calculation of the performance that the adviser distributes to any person and all written communications received or sent relating to the adviser’s performance.

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Advisers Act rule 204-2 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

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.

previously approved and subsequently extended under Office of Management and Budget (“OMB”) control number 3235-0278 (expiring July 31, 2017), 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 of the Information Collection

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 This collection of information is found at 17 CFR 275.204-2 and is mandatory.

3. Role of Improved 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. Efforts to Identify Duplication

The collection of information requirements of the rule, including the proposed amendments, are not duplicated elsewhere.

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)

5. Effect on Small Entities

The requirements of the rule, including the proposed amendments, 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.

6. Consequences of Less Frequent 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. Consultation Outside the Agency

⁶ See *supra* note 3.

In its release proposing amendments to Form ADV and rule 204-2, the Commission requested public comment on the effect of information collections under these amendments. 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 to Respondents

None.

10. Assurance of 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. Estimate of Hour Burden

The proposed amendments to rule 204-2 would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. The proposed amendments also would require advisers to maintain originals of all written communications received and copies of written communications sent by an investment adviser related to the performance or rate of return of any or all managed accounts or securities

⁷ See *supra* note 4.

recommendations. These records would be required to be maintained in the same manner, and for the same period of time, as other books and records required to be maintained under rule 204-2(a).

The total annual collection of information burden currently approved by OMB for rule 204-2 is 1,986,152 hours. This currently approved annual aggregate burden is based on an estimate of 10,946 registered advisers, or approximately 181.45 hours per registered adviser.⁸

Based on Investment Adviser Registration Depository data as of April 1, 2015, there are approximately 11,600 SEC registered advisers required to maintain copies of certain books and records relating to their advisory business. This is an increase of 654 SEC registered advisers over the previously approved burden.

We estimate that most advisers provide, or seek to provide, performance information to their clients. We believe that the documentation necessary to support the performance calculations is customarily maintained, or required to be maintained by advisers already in account statements or portfolio management systems or in order to show compliance with the Advisers Act advertising rule, rule 206(4)-1. Accordingly, the proposed amendments to rule 204-2 are estimated to increase the burden by approximately 0.5 hours per adviser annually for a total increase of 5,800 hours.⁹ The revised annual aggregate burden would be 2,110,620 hours.¹⁰ The revised average burden per adviser would be approximately 182 hours per year.¹¹

⁸ 10,946 registered advisers x 181.45 hours per adviser = 1,986,152 hours.

⁹ 11,600 advisers x 0.5 hours = 5,800 hours.

¹⁰ 1,986,152 (current approved burden) + 118,668 (burden for additional registrants) + 5,800 (burden for proposed amendments) = 2,110,620 hours.

¹¹ 2,110,620 hours/11,600 advisers = 181.9 hours.

Advisers would likely use a combination of compliance clerks and general clerks to make and keep the information and records required under the rule. The currently approved total cost burden is \$108,708,557.10. We estimate the hourly wage for compliance clerks to be \$64 per hour, including benefits, and the hourly wage for general clerks to be \$53 per hour, including benefits.¹² For each adviser, 182 burden hours would be required to make and keep the information and records required under the rule. We anticipate that compliance clerks will perform an estimated 32 hours of this work, and clerical staff will perform the remaining 150 hours. The total cost per respondent therefore will be an estimated \$9,998,¹³ for a total burden cost of approximately \$115,976,800.¹⁴

13. Estimate of Total Annual Cost Burden

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

14. Estimate of Cost to the Federal Government

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

15. Explanation of Changes in Burden

We estimate that the total burden hour associated with rule 204-2 will increase from 1,986,152 hours per year to 2,110,620 hours per year¹⁵ because we have increased our estimate of the number of respondents subject to the rule as well as increased our estimate of the per

¹² Our hourly wage rate estimate for a compliance manager and compliance clerk is based on data from the SIFMA *Office Salaries in the Securities Industry Report 2013*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35, for compliance clerks to account for bonuses, firm size, employee benefits and overhead.

¹³ (32 hours per compliance clerk x \$64) + (150 hours per clerical staff x \$53) = (\$2,048 + \$7,950) = \$9,998.

¹⁴ \$9,998 per adviser x 11,600 advisers = approximately \$115,976,800.

¹⁵ *See supra* note 11.

adviser annual burden due to the proposed amendments to rule 204-2.

16. Information Collection Planned for Statistical Purposes

None.

17. Approval to not Display Expiration Date

Not Applicable.

18. Exceptions to Certification Statement

Not Applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.