

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**REVISIONS TO RULE 204-2**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

On August 25, 2016, the Securities and Exchange Commission (the “Commission” or “SEC”) adopted 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”).<sup>1</sup> The 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.<sup>2</sup>

Section 204 of the Advisers Act provides that investment advisers required to register with the Securities and Exchange Commission (the “Commission”) must make and keep certain records for prescribed periods, and make and disseminate certain reports. Advisers Act rule 204-2 also sets forth mandatory requirements for maintaining and preserving specified books and records.<sup>3</sup> The records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years.<sup>4</sup> These requirements constitute a mandatory “collection of information,” within the meaning of the Paperwork Reduction Act. The collection has been previously approved and subsequently extended under Office of Management and Budget

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<sup>1</sup> 15 U.S.C 80b-4.

<sup>2</sup> The Adopting Release is attached as Appendix A.

<sup>3</sup> 17 CFR 275.204-2.

<sup>4</sup> 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

(“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 and Use of the Information Collection**

The amendments to rule 204-2 will require investment advisers to make and keep the following records: (i) documentation necessary to demonstrate the calculation of the performance the adviser distributes to any person, and (ii) all written communications received or sent relating to the adviser’s performance.

The purpose of the information collection is to assist the Commission’s examination and oversight program in determining compliance with the Advisers Act and 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 subject to the provisions of applicable law.<sup>5</sup> This collection of information is found at 17 CFR 275.204-2 and is mandatory.

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appropriate office of the investment adviser.

<sup>5</sup> See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

### **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.<sup>6</sup>

### **4. Duplication**

The collection of information requirements of the adopted rule amendments are not duplicated elsewhere.

### **5. Effect on Small Entities**

The requirements of the adopted amendments to rule 204-2 are the same for all investment advisers registered with the Commission, including those that are small entities, so that Commission staff is able to conduct its oversight of advisers, including examinations and investigations. 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 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)**

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<sup>6</sup> See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release No. 1945 (May 24, 2001) [66 FR 29224 (May 30, 2001)].

The collection requirements under rule 204-2 generally require advisers to maintain documents for five years, and in some cases longer.<sup>7</sup> This retention period has not been affected by the adopted amendments to rule 204-2. 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**

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

#### **10. Confidentiality**

Responses provided to the Commission pursuant to rule 204-2 in the context of the

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<sup>7</sup> See *supra* note 4.

Commission's examination and oversight program are generally kept confidential.<sup>8</sup>

**11. Sensitive Questions**

None / No PII collected.

**12. Burden of Information Collection**

The currently approved total annual burden for rule 204-2 is based on an estimate of 10,946 registered advisers subject to rule 204-2 and an estimated average burden of 181.45 burden hours each year per adviser, for a total annual aggregate burden estimate of 1,986,152 hours. Based upon updated IARD system data as of May 16, 2016, the approximate number of investment advisers is 12,024. As a result of the increase in the number of advisers registered with the Commission since the current total annual burden estimate was approved, the total burden estimate has increased by 195,603 hours.<sup>9</sup>

We estimate that most advisers provide, or seek to provide, performance information to their clients. Under the amendments, each adviser will be required to retain the records in the same manner, and for the same period of time, as other books and records under the rule.<sup>10</sup> We estimate that the amendments to rule 204-2 will increase the burden by approximately 1.5 hours per adviser annually for a total annual aggregate increase of 18,036 hours.<sup>11</sup>

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<sup>8</sup> See *supra* note 5.

<sup>9</sup> 12,024 advisers x 181.45 hours = 2,181,755 hours. 2,181,755 hours – 1,986,152 hours = 195,603 hours.

<sup>10</sup> Specifically, the records must be maintained in an easily accessible place for at least five years from the end of the fiscal year during which the last entry was made in such record, the first two years in an appropriate office of the investment adviser. See rule 204-2(e)(1).

<sup>11</sup> 12,024 advisers x 1.5 hours = 18,036 hours.

The revised annual aggregate burden estimate is 2,199,791 hours.<sup>12</sup> The revised average burden estimate of the recordkeeping requirements under rule 204-2 per SEC-registered adviser will be approximately 183 hours per year.<sup>13</sup> Advisers will 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 annual aggregate cost burden is \$108,708,557.10. We estimate the hourly wage for compliance clerks to be \$65 per hour, including benefits, and the hourly wage for general clerks to be \$58 per hour, including benefits.<sup>14</sup> For each adviser, 183 annual 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 32 hours of this work, and general clerks will perform the remaining 151 hours. The total annual cost per respondent therefore will be an estimated \$10,838,<sup>15</sup> for a total annual aggregate burden cost estimate of approximately \$130,316,112,<sup>16</sup> an increase of \$21,607,555 from the currently approved total annual aggregate cost per respondent.<sup>17</sup> The increase in cost is attributable to a larger registered investment adviser population since the most recent approval, an adjustment for

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<sup>12</sup> 1,986,152 (current approved burden) + 195,603 (burden for additional registrants) + 18,036 (burden for amendments) = 2,199,791 hours.

<sup>13</sup> 2,199,791 hours/12,024 advisers = 183 hours.

<sup>14</sup> Our hourly wage rate estimate for a compliance clerk and general clerk is based on data from the *SIFMA Office Salaries in the Securities Industry Report 2013* (“*SIFMA Office Salaries Report*”), modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93, to account for bonuses, firm size, employee benefits and overhead.

<sup>15</sup> (32 hours per compliance clerk x \$65) + (151 hours per general clerk x \$58) = (\$2,080 + \$8,758) = \$10,838.

<sup>16</sup> \$10,838 per adviser x 12,024 advisers = approximately \$130,316,112.

<sup>17</sup> \$130,316,112 - \$108,708,557 = \$21,607,555.

inflation in the hourly wage estimates for a compliance clerk and general clerk, and the rule 204-2 amendments.

Under the amendments, these records are 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).

**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 costs to the federal government directly attributable to rule 204-2.

**15. Change in Burden**

We estimate that the total burden hour associated with rule 204-2 will increase from 1,986,152 hours per year to 2,199,791 hours per year because of the larger registered investment adviser population since the most recent PRA approval, and the rule 204-2 amendments that have been adopted. The number of hours per response has changed since the last estimate from 181.45 to 183 average annual burden hours per respondent.

**16. Information Collection Planned for Statistical Purposes**

None.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exceptions to Certification Statement for Paperwork Reduction Act**

**Submission**

Not applicable.

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

Not applicable.