

**SUPPORTING STATEMENT  
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION SUBMISSION FOR  
Proposed Rule 206(4)-4**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Proposed new rule 206(4)-4 (17 CFR 275.206(4)-4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) (“Advisers Act”) would require SEC-registered investment advisers to adopt and implement written business continuity and transition plans reasonably designed to address operational and other risks related to a significant disruption in the investment adviser’s operations. The proposed rule is designed to increase the likelihood that advisers are as prepared as possible to continue operations during times of stress and that they have taken steps to minimize risks that could lead to disruptions in their operations. The proposed rule also is also designed to increase the likelihood that clients are not harmed in the event of a significant disruption in an adviser’s operations. The proposed rule contains a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>1</sup> The information collection is integral to the framework of proposed rule 206(4)-4 and therefore necessary to help further the proposed rule’s aforementioned goals.

**2. Purpose and Use of the Information Collection**

The collection of information under rule 206(4)-4 is designed to increase the likelihood that advisers are as prepared as possible to continue operations on an ongoing basis and to meet client expectations and legal obligations in the event of a significant disruption to their operations. The respondents are investment advisers registered with

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<sup>1</sup> 44 U.S.C. 3501 through 3521.

the Commission. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.<sup>2</sup>

The information collection is integral to the framework of proposed rule 206(4)-4 and therefore necessary to help further the proposed rule's aforementioned goals. The information collection would also assist the Commission's examination staff in assessing advisers' compliance with proposed rule 206(4)-4 and identifying weaknesses in advisers' business continuity and transition plans.

### **3. Consideration Given to Information Technology**

Proposed rule 206(4)-4 does not require the reporting of any information or the filing of any documents with the Commission. The Electronic Signatures in Global and National Commerce Act<sup>3</sup> and conforming amendments to rules under the Advisers Act permit advisers to maintain records electronically.

### **4. Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. The information collection that would be required by rule proposed rule 206(4)-4 is not duplicated elsewhere.

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

The information collection requirements of proposed rule 206(4)-4 do not distinguish between small entities and other advisers. Proposed rule 206(4)-4 would not apply to most advisers that are small entities ("small advisers") because small advisers are generally registered with one or more state securities authorities instead of with the

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<sup>2</sup> See section 210(b) of the Advisers Act.

<sup>3</sup> P.L. 106-229, 114 Stat. 464 (June 30, 2000).

Commission.<sup>4</sup> In addition, because small advisers generally face the same types of transition and business continuity issues as larger advisers, although on a smaller scale, the Commission believes that small advisers should be subject to proposed rule 206(4)-4 to the same extent as larger advisers and be allowed to tailor their business continuity and transition plans to the scope of their business. Proposed rule 206(4)-4 allows each adviser the necessary flexibility in creating a business continuity and transition plan to take into account the adviser's own unique operations, the nature and complexity of its business, its clients, and its key personnel, and we believe that such flexibility may result in small advisers incurring less costs to comply.

## **6. Consequences of Not Conducting Collection**

Proposed rule 206(4)-4 would require SEC-registered investment advisers to adopt and implement written business continuity and transition plans reasonably designed to address operational and other risks related to a significant disruption in the investment adviser's operations. The information collection is integral to the framework of proposed rule 206(4)-4. Thus, not requiring this collection of information would be incompatible with the investor protection goals of proposed rule 206(4)-4.

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

Recordkeeping requirements associated with proposed rule 206(4)-4 are set forth separately as amendments to existing rule 204-2 under the Advisers Act. A separate PRA exists for rule 204-2, but it is relevant to note here that proposed amendments to rule 204-2 would require advisers to make and keep copies of all written business continuity and transition plans that are in effect or were in effect at any time during the last five years, as

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<sup>4</sup> See section 203A of the Advisers Act, prohibiting most small advisers from registering with the Commission.

well as any records documenting the adviser's annual review of its business continuity and transition plan. Although this five-year period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2), the staff believes that this is warranted because the rule contributes 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**

Before adopting proposed rule 206(4)-4, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

**9. Payment or Gift**

No payment or gift to respondents was provided.

**10. Confidentiality**

Responses provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law. If information collected pursuant to proposed rule 206(4)-4 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality

accorded to other responses provided to the Commission in the context of its examination and oversight program.

**11. Sensitive Questions**

No questions of a sensitive nature are involved.

**12. Burden of Information Collection**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Compliance with proposed rule 206(4)-4 would be mandatory for all SEC-registered investment advisers.

Commission staff estimates that each adviser would include one-time initial costs to adopt and implement a written business continuity and transition plan pursuant to proposed rule 206(4)-4, as well as ongoing plan-related costs. There are currently approximately 11,956 investment advisers registered with the Commission.<sup>5</sup>

Commission staff estimates that advisers will spend between 50 to 500 hours to initially adopt and implement a business continuity and transition plan depending on the nature of an adviser's current business continuity plan and the complexity of its operations. This range is comprised of staff estimates that a representative smaller adviser (defined in this PRA as advisers with less than \$100 million in assets under management) would spend 50 hours on this initial effort at a cost of \$12,515,<sup>6</sup> a representative mid-sized adviser

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<sup>5</sup> This is the number of investment advisers registered with the Commission on the IARD System as of January 4, 2016.

<sup>6</sup> This estimate is based on the following calculations: 25 hours x \$288 (hourly rate for a compliance manager) = \$7,200; 20 hours x \$127 (hourly rate for an operations specialist) = \$2,540; 5 hours x \$555 (hourly rate for a deputy general counsel) = \$2,775. \$7,200 + \$2,540 + 2,775 = \$12,515. The hourly

(defined in this PRA as advisers with at least \$100 million in assets under management but less than \$1 billion) would spend 250 hours on this initial effort at a cost of \$70,045,<sup>7</sup> and a representative larger adviser (defined in this PRA as advisers with at least \$1 billion in assets under management) would spend 500 hours on this initial effort at a cost of \$147,310.<sup>8</sup> Exact costs for any given adviser would depend on the facts and circumstances of the adviser's operations and the comprehensiveness of its existing plan. Aggregating the estimates above for all advisers, however, yields a total industry-wide initial hourly burden of 3,404,600<sup>9</sup> (as monetized, is equivalent to a one-time aggregate

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wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>7</sup> This estimate is based on the following calculations: 75 hours x \$288 (hourly rate for a compliance manager) = \$21,600; 60 hours x \$127 (hourly rate for an operations specialist) = \$7,620; 15 hours x \$555 (hourly rate for a deputy general counsel) = \$8,325; 50 hours x \$264 (hourly rate for a senior systems analyst) = \$13,200; 50 hours x \$386 (hourly rate for an attorney) = \$19,300. \$21,600 + \$7,620 + \$8,325 + \$13,200 + \$19,300 = \$70,045. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>8</sup> This estimate is based on the following calculations: 100 hours x \$288 (hourly rate for a compliance manager) = \$28,800; 80 hours x \$127 (hourly rate for an operations specialist) = \$10,160; 20 hours x \$555 (hourly rate for a deputy general counsel) = \$11,100; 65 hours x \$264 (hourly rate for a senior systems analyst) = \$17,160; 65 hours x \$386 (hourly rate for an attorney) = \$25,090; 30 hours x \$410 (hourly rate for a computer operations department manager) = \$12,300; 30 hours x \$271 (hourly rate for a financial reporting manager) = \$8,130; 40 hours x \$340 (hourly rate for a senior operations manager) = \$13,600; 30 hours x \$255 (hourly rate for a senior business analyst) = \$7,650; 40 hours x \$333 (hourly rate for a senior risk management specialist) = \$13,320. \$28,800 + \$10,160 + \$11,100 + \$17,160 + \$25,090 + \$12,300 + \$8,130 + \$13,600 + \$7,650 + \$13,320 = \$147,310. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>9</sup> This estimate is based on the following calculations: (2,032 smaller advisers x 50 hours) + (6,636 mid-sized advisers x 250 hours) + (3,288 larger advisers x 500 hours) = 3,404,600 hours.

burden of approximately \$974.6 million).<sup>10</sup> Amortized over a three-year period, this would be an annual hourly burden of 95 per adviser<sup>11</sup> (as monetized, is equivalent to an annual amortized burden per adviser of \$27,172).<sup>12</sup>

In addition to the initial burden, an adviser would incur ongoing, annual costs associated with its business continuity and transition plan, including the adviser annually reviewing the adequacy of its business continuity and transition plan and the effectiveness of its implementation. Based on staff experience, we estimate these ongoing costs would total approximately 25% of an adviser's initial costs. Accordingly, we estimate that a representative smaller adviser would spend 12.5 hours annually on this effort internally (as monetized, is equivalent to an annual burden of \$3,129),<sup>13</sup> a representative mid-sized adviser would spend 62.5 hours annually on this effort internally (as monetized, is equivalent to an annual burden of \$17,511),<sup>14</sup> and a representative larger adviser would spend 125 hours annually on this effort internally (as monetized, is equivalent to an annual burden of \$36,828).<sup>15</sup> Aggregating the estimates above for all advisers yields a total industry-wide ongoing annual burden of approximately 851,150 hours (as monetized, is equivalent to an annual burden of \$243.65 million).<sup>16</sup> This

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<sup>10</sup> This estimate is based on the following calculation: (2,032 smaller advisers x \$12,515) + (6,636 mid-sized advisers x \$70,045) + (3,288 larger advisers x \$147,310) = \$974.6 million.

<sup>11</sup> This estimate is based on the following calculations: 3,404,600 hours / 3 years = 1,134,867 hours per year. 1,134,867 hours / 11,956 advisers = 95 hours per year per adviser.

<sup>12</sup> This estimate is based on the following calculations: \$974.6 million / 3 years = \$324.87 million per year. \$324.87 million / 11,956 advisers = \$27,172 per year per adviser.

<sup>13</sup> This estimate is based on the following calculation: 0.25 x 50 hours = 12.5 hours.

<sup>14</sup> This estimate is based on the following calculation: 0.25 x 250 hours = 62.5 hours.

<sup>15</sup> This estimate is based on the following calculation: 0.25 x 500 hours = 125 hours.

translates to an annual burden per adviser of 71.2 hours (as monetized, is equivalent to an annual burden of \$20,379).<sup>17</sup>

### **13. Cost to Respondents**

The cost burden is the cost associated with some advisers consulting outside legal counsel and/or other outside professionals to assist in drafting policies and procedures and/or to assist in evaluating particular components of a plan. The cost burden does not include the hour burden discussed in Item 12.

We estimate that the initial costs associated with such an engagement would include fees for approximately 10 hours for smaller firms, 30 hours for a mid-sized firm, and 50 hours for a larger firm, at an average rate of \$400 per hour (estimated hourly rate for outside legal services).<sup>18</sup> Consequently, for a smaller firm we estimate a total of \$4,000 in outside fees for each smaller firm,<sup>19</sup> \$12,000 for each medium firm,<sup>20</sup> and \$20,000 for each larger firm.<sup>21</sup> Aggregating these estimates for all advisers, yields a total industry wide initial cost burden of \$153.5 million attributable to engaging outside legal services for assistance in initially drafting and implementing business continuity

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<sup>16</sup> This estimate is based on the following calculations: (2,032 smaller advisers x 12.5 hours) + (6,636 mid-sized advisers x 62.5 hours) + (3,288 larger advisers x 125 hours) = 851,150 hours. (2,032 smaller advisers x \$3,129) + (6,636 mid-sized advisers x \$17,511) + (3,288 larger advisers x \$36,828) = \$243.65 million.

<sup>17</sup> This estimate is based on the following calculations: 851,150 hours / 11,956 advisers = 71.2 hours per adviser. \$243.65 million / 11,956 advisers = \$20,379 per adviser.

<sup>18</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs would be similar to the costs of outside legal services.

<sup>19</sup> This estimate is based on the following calculation: 10 hours x \$400 = \$4,000.

<sup>20</sup> This estimate is based on the following calculation: 30 hours x \$400 = \$12,000.

<sup>21</sup> This estimate is based on the following calculation: 50 hours x \$400 = \$20,000.



and transition plans pursuant to proposed rule 206(4)-4.<sup>22</sup> Amortized over a three-year period, this would be an initial annual cost burden per adviser of \$4,282.<sup>23</sup>

In addition to the initial burden, an adviser would incur ongoing, annual costs associated with its business continuity and transition plan, including the adviser annually reviewing the adequacy of its business continuity and transition plan and the effectiveness of its implementation. Based on staff experience, we estimate these ongoing costs would total approximately 25% of an adviser's initial costs. Accordingly, we estimate that a representative smaller adviser would incur outside costs of \$1,000,<sup>24</sup> a representative mid-sized adviser would incur outside costs of \$3,000,<sup>25</sup> and a representative larger adviser would incur outside costs of \$5,000.<sup>26</sup> Aggregating the estimates above for all advisers yields total industry-wide ongoing annual outside costs of \$38.4 million.<sup>27</sup> This translates to an annual outside costs per adviser of \$3,212.<sup>28</sup>

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<sup>22</sup> This estimate is based on the following calculation: (\$4,000 per smaller adviser x 2,032 smaller advisers) + (\$12,000 per mid-sized adviser x 6,636 mid-sized advisers) + (\$20,000 per larger adviser x 3,288 larger advisers) = \$153.5 million.

<sup>23</sup> This estimate is based on the following calculations: \$153.5 million / 3 years = \$51.2 million per year. \$51.2 million / 11,956 advisers = \$4,282 per adviser.

<sup>24</sup> This estimate is based on the following calculation: 0.25 x \$12,515 = \$3,129. 0.25 x \$4,000 = \$1,000.

<sup>25</sup> This estimate is based on the following calculation: 0.25 x \$70,045 = \$17,511. 0.25 x \$12,000 = \$3,000.

<sup>26</sup> This estimate is based on the following calculation: 0.25 x \$147,310 = \$36,828. 0.25 x \$20,000 = \$5,000.

<sup>27</sup> This estimate is based on the following calculation: (2,032 smaller advisers x \$1,000) + (6,636 mid-sized advisers x \$3,000) + (3,288 larger advisers x \$5,000) = \$38.4 million.

<sup>28</sup> This estimate is based on the following calculation: \$38.4 million / 11,956 advisers = \$3,212 per adviser.

**14. Costs to Federal Government**

Proposed rule 206(4)-4 does not impose a cost to the federal government.

Commission staff may, however, review records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

**15. Changes in Burden**

This is the first request for approval of the collection of information for this rule.

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

Not applicable.

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

The Commission is not seeking approval to not display the expiration date for OMB approval.

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

The Commission is not seeking an exception to the certification statement.

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

The collection of information will not employ statistical methods.