

**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 6, 2016, the Securities and Exchange Commission (the “Commission” or “SEC”) issued a release<sup>1</sup> proposing a rule (the “Proposed 956 Rule”) pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and an amendment to rule 204-2 under the Investment Advisers Act of 1940 (the “Advisers Act” or “Act”).<sup>2</sup> The proposed amendment to rule 204-2 would require registered investment advisers that would be subject to the Proposed 956 Rule to maintain the records required by, and for the periods specified in, section 303.4(f) and, for certain of these registered investment advisers,<sup>3</sup> the records required by, and for the periods specified in, sections 303.5 and 303.11 of the Proposed 956 Rule in accordance with the recordkeeping requirements of rule 204-2.

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. Rule 204-2 sets forth mandatory requirements for maintaining and preserving specified books and records.<sup>4</sup> The records that an investment adviser must keep in

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<sup>1</sup> See *Incentive-based Compensation Arrangements*, Investment Advisers Act Release No. 4383 (May 6, 2016) (the “Proposed 956 Release”).

<sup>2</sup> 15 U.S.C 80b-4.

<sup>3</sup> The Proposed 956 Rule identifies three categories of investment advisers based on average total consolidated assets, as defined therein. Investment advisers with average total consolidated assets greater than or equal to \$250 billion, greater than or equal to \$50 billion and less than \$250 billion or greater than or equal to \$1 billion and less than \$50 billion would be Level 1, Level 2 or Level 3 covered institutions, respectively. See the Proposed 956 Release.

<sup>4</sup> 17 CFR 275.204-2.

accordance with rule 204-2 must generally be retained for not less than five years.<sup>5</sup> 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 (expiring March 31, 2020), 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 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.<sup>6</sup> This collection of information is found at 17 CFR 275.204-2 and is mandatory.

## **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

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<sup>5</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 appropriate office of the investment adviser.

<sup>6</sup> See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

currently permits advisers to maintain records required by rule 204-2 through electronic media.<sup>7</sup>

#### **4. Duplication**

The collection of information requirements of rule 204-2, including the proposed amendment, are not duplicated elsewhere.

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

The requirements of rule 204-2, including the proposed amendment, 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 rule 204-2 to exempt small entities from these requirements.

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

Less frequent information collection would be incompatible with the objectives of rule 204-2 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. 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

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<sup>7</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)].

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 the Proposed 956 Release, the Commission requested public comment on the effect of information collections under the proposed amendment to rule 204-2. 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 Commission's examination and oversight program are generally kept confidential.

#### **11. Sensitive Questions**

Not applicable .

#### **12. Burden of Information Collection**

The proposed amendment to rule 204-2 would require registered investment advisers that are Level 1, Level 2 or Level 3 covered institutions to make and keep true, accurate and current records required by, and for the period specified in, section 303.4(f) and, for those registered investment advisers that are Level 1 or Level 2 covered institutions, the records required by, and for the periods specified in, sections 303.5 and 303.11 of the Proposed 956 Rule.

The currently-approved total annual burden estimate for rule 204-2 is 2,199,791 hours. This burden estimate was based on estimates that 12,024 investment advisers were subject to rule 204-2, and each of these investment advisers spends an average of 182.95 hours preparing and preserving records in accordance with the rule. Based on updated data as of December 1, 2017, there are 12,693 registered investment advisers.<sup>8</sup> This is an increase of 669 registered investment advisers over the previously approved burden. This increase in the number of registered investment advisers increases the total burden hours of current rule 204-2 from 2,199,791 to 2,322,184, an increase of 122,393 hours.<sup>9</sup>

Based on the Commission's staff experience, the Commission estimates that the proposed amendment to rule 204-2 would increase each registered investment adviser's average annual collection burden under rule 204-2 by 2 hours<sup>10</sup> for each of the three types of records required to be preserved pursuant to the collection of information relating to the Proposed 956 Rule.<sup>11</sup> The Commission also estimates that 18, 21 and 630 investment advisers would be Level 1, Level 2 or Level 3 covered institutions, respectively, under the Proposed 956 Rule. Therefore, for a registered investment adviser that is a Level 1 covered institution, the increase in its average annual collection burden would be from 182.95 hours to 188.95 hours,<sup>12</sup> and would thus increase

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<sup>8</sup> Based on data from the Commission's Investment Adviser Registration Depository ("IARD") as of December 1, 2017.

<sup>9</sup> This estimate is based on the following calculations:  $(12,693 - 12,024) \times 182.95 = 122,393$ ;  $122,393 + 2,199,791 = 2,322,184$ .

<sup>10</sup> The burden hours estimated for amending rule 204-2 assumes that the investment adviser already has systems in place to comply with the general requirements of rule 204-2. Accordingly, the 2 burden hours estimated for each type of record required to be preserved pursuant to the Proposed 956 Rule is attributable solely to the burden associated with maintaining such record.

<sup>11</sup> The records required by sections 303.4(f), 303.5 and 303.11 of the Proposed 956 Rule.

<sup>12</sup> This estimate is based on the following calculation:  $182.95 \text{ existing hours} + 6 \text{ new hours} = 188.95$

the annual aggregate burden for rule 204-2 by 108 hours,<sup>13</sup> from 2,322,184 hours to 2,322,292 hours.<sup>14</sup> As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204-2 would increase by approximately \$456,<sup>15</sup> which would increase the estimated monetized aggregate annual burden for rule 204-2 by \$8,208<sup>16</sup>, from \$130,316,112 to \$130,324,320.<sup>17</sup> For a registered investment adviser that is a Level 2 covered institution, the increase in its average annual collection burden would be from 182.95 hours to 186.95 hours,<sup>18</sup> and would thus increase the annual aggregate burden for rule 204-2 by 84 hours,<sup>19</sup> from 2,322,292 hours<sup>20</sup> to 2,322,376 hours.<sup>21</sup> As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204-2 would increase by approximately

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hours.

<sup>13</sup> This estimate is based on the following calculation: 18 (Investment advisers considered as Level 1 covered institutions) x 6 hours = 108 hours.

<sup>14</sup> This estimate is based on the following calculation: 2, 322,184 hours + 108 hours = 2, 322,292 hours.

<sup>15</sup> This estimate is based on the following calculation: 6 hours x \$76 (hourly rate for an administrative assistant) = \$456. The hourly wage used is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

<sup>16</sup> This estimate is based on the 18 (Level 1 covered institutions) x \$456 = \$8,208.

<sup>17</sup> This estimate is based on the following calculations: \$130,316,112 + \$8,208 = \$130,324,320.

<sup>18</sup> This estimate is based on the following calculation: 182.95 existing hours + 4 new hours = 186.95 hours.

<sup>19</sup> This estimate is based on the following calculation: 21 (Level 2 covered institutions) advisers x 4 hours = 84 hours.

<sup>20</sup> This estimate includes the increase in the annual aggregate burden for covered investment advisers that are Level 1 covered institutions.

<sup>21</sup> This estimate is based on the following calculation: 2, 322,292 hours + 84 hours = 2, 322,376 hours.

\$304,<sup>22</sup> which would increase the estimated monetized aggregate annual burden for rule 204-2 by \$6,384<sup>23</sup>, from \$130,324,320<sup>24</sup> to \$130,330,704.<sup>25</sup> For a registered investment adviser that is a Level 3 covered institution, the increase in its average annual collection burden would be from 182.95 hours to 184.95 hours,<sup>26</sup> and would thus increase the annual aggregate burden for rule 204-2 by 1,260 hours,<sup>27</sup> from 2,322,376 hours<sup>28</sup> to 2,323,636 hours.<sup>29</sup> As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204-2 would increase by approximately \$152,<sup>30</sup> which would increase the estimated monetized aggregate annual burden for rule 204-2 by \$95,760<sup>31</sup>, from \$130,330,704<sup>32</sup> to \$130,426,464.<sup>33</sup>

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<sup>22</sup> This estimate is based on the following calculation: 4 hours x \$76 (hourly rate for an administrative assistant) = \$304. The hourly wage used is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

<sup>23</sup> This estimate is based on the following calculation: 21 (Level 2 covered institutions) x \$304 = \$6,384.

<sup>24</sup> This estimate includes the monetized increase in the annual aggregate burden for covered investment advisers that are Level 1 covered institutions.

<sup>25</sup> This estimate is based on the following calculations: \$130,324,320 + \$6,384 = \$130,330,704.

<sup>26</sup> This estimate is based on the following calculation: 182.95 existing hours + 2 new hours = 184.95 hours.

<sup>27</sup> This estimate is based on the following calculation: 630 (Level 3 covered institutions) advisers x 2 hours = 1,260 hours.

<sup>28</sup> This estimate includes the increase in the annual aggregate burden for covered investment advisers that are Level 1 or Level 2 covered institutions.

<sup>29</sup> This estimate is based on the following calculation: 2,322,376 hours + 1,260 hours = 2,323,636 hours.

<sup>30</sup> This estimate is based on the following calculation: 2 hours x \$76 (hourly rate for an administrative assistant) = \$152. The hourly wage used is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

<sup>31</sup> This estimate is based on the following calculation: 630 (Level 3 covered institutions) x \$152 =

The Commission estimates that the proposed amendment would not result in any additional external costs associated with this collection of information for rule 204-2.

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

**15. Changes in Burden**

The Commission estimates that the total burden hour associated with rule 204-2 will increase from 2,199,791 hours per year to 2,323,636 hours per year because the Commission has increased its estimate of the number of respondents subject to rule 204-2 as well as increased its estimate of the per investment adviser annual burden due to the proposed amendment to rule 204-2.

**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.

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\$95,760.

<sup>32</sup> This estimate includes the monetized increase in the annual aggregate burden for covered investment advisers that are Level 1 or Level 2 covered institutions.

<sup>33</sup> This estimate is based on the following calculations:  $130,330,704 + \$95,760 = \$130,426,464$ .

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

Not applicable.