

**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 June 28, 2016, the Securities and Exchange Commission (the “Commission” or “SEC”) proposed a new rule relating to business continuity and transition planning (“Proposed Rule 206(4)-4”) as well as amendments to rule 204-2 (or the “Rule”) under the Investment Advisers Act of 1940 (the “Advisers Act” or “Act”).<sup>1</sup> The proposed amendments to the Rule would require investment advisers to make and keep records of all business continuity and transition plans that are currently in effect or at any time within the past five years were in effect.<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. The Rule 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 the Rule must generally be retained for not less than five years.<sup>4</sup> These requirements constitute a mandatory “collection of information,”

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<sup>1</sup> See Adviser Business Continuity and Transition Plans, Advisers Act Rel. No. 4439 (June 28, 2016) [81 FR 43530 (July 5, 2016)] (“Proposing Release”).

<sup>2</sup> The Proposing 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 appropriate office of the investment adviser.

within the meaning of the Paperwork Reduction Act. The collection has been previously approved and subsequently extended under Office of Management and Budget (“OMB”) control number 3235-0278 ([expiring March 31, 2020][update exp. date when pending 956-related 204-2 request is approved]), 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 proposed amendments to the Rule would require a registered investment adviser to maintain copies of the written business continuity and transition plans drafted under Proposed Rule 206(4)-4. In addition, the proposed amendments to the Rule would require a registered investment adviser to retain copies of any records documenting the adviser's annual review of its policies and procedures under Proposed Rule 206(4)-4.

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.

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

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 proposed amendments to the Rule are not duplicated elsewhere.

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

The requirements of the proposed amendments to the Rule 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 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 the Rule generally require advisers to maintain documents for five years, and in some cases longer.<sup>7</sup> This retention period would not be affected by the proposed amendments to the Rule. 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

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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)].

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

collection with this retention period. The retention periods in the Rule are warranted because the recordkeeping requirements in the Rule 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 setting forth Proposed Rule 206(4)-4 and amendments to the Rule, 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 the Rule in the context of the Commission's examination and oversight program are generally kept confidential.<sup>8</sup>

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

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally

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identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

## 12. Burden of Information Collection

The currently approved total annual burden for the Rule is based on an estimate of 12,693 registered advisers<sup>9</sup> subject to the Rule and an annual aggregate burden estimate of 2,323,636 hours.

Based on staff experience, we estimate that the proposed amendments to the Rule would increase each registered investment adviser's average annual collection burden under the Rule by 2 hours, for a total annual aggregate increase of 25,386 hours.<sup>10</sup>

The revised annual aggregate burden estimate would be 2,349,022 hours.<sup>11</sup> The revised average burden estimate of the recordkeeping requirements under the Rule per SEC-registered adviser would be approximately 185 hours per year.<sup>12</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 \$130,426,464. We estimate the hourly wage for compliance clerks to be \$65 per hour, including benefits, and the

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

<sup>9</sup> Based on data from the Commission's Investment Adviser Registration Depository ("IARD") as of December 1, 2017.

<sup>10</sup> 12,693 advisers x 2 hours = 25,386 hours.

<sup>11</sup> 2,323,636 (current approved burden) + 25,386 (burden for proposed amendments) = 2,349,022 hours.

<sup>12</sup> 2,349,022 hours/12,693 advisers = 185.06 hours.

hourly wage for general clerks to be \$58 per hour, including benefits.<sup>13</sup> 185 annual burden hours per adviser will be required to make and keep the information and records required under the rule. We anticipate that compliance clerks will perform an estimated 34 hours of this work, and general clerks will perform the remaining 151 hours. The total annual cost per respondent therefore will be an estimated \$10,968,<sup>14</sup> for a total annual aggregate burden cost estimate of approximately \$139,216,824,<sup>15</sup> an increase of \$8,790,360 from the currently approved total annual aggregate burden cost estimate.<sup>16</sup> The increase in cost is attributable to the proposed amendments to the Rule.

### **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 the Rule.

### **15. Change in Burden**

We estimate that the total burden hour associated with the Rule would increase from 2,323,636 hours per year to 2,349,022 hours per year because of the proposed amendments to the Rule. The number of hours per response has changed since the last estimate from 183 to 185

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<sup>13</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>14</sup> (34 hours per compliance clerk x \$65) + (151 hours per general clerk x \$58) = (\$2,210 + \$8,758) = \$10,968.

<sup>15</sup> \$10,968 per adviser x 12,693 advisers = approximately \$139,216,824.

<sup>16</sup> \$139,216,824 - \$130,426,464 = \$8,790,360.

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.