

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 204-3

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 204-3, the “brochure rule,” requires an investment adviser to deliver its brochure and brochure supplements to its new clients or prospective clients before or at the start of the advisory relationship and to deliver annually thereafter the full updated brochure or a summary of material changes to its brochure. The rule also requires that advisers deliver an amended brochure or brochure supplement (or just a statement describing the amendment) to clients only when disciplinary information in the brochure or supplement becomes materially inaccurate. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Advisers registered with the Commission are required to prepare and electronically file firm brochures through the Investment Adviser Registration Depository (“IARD”).

Rule 204-3 contains a collection of information titled “Rule 204-3 under the Investment Advisers Act of 1940,” found at 17 CFR 275.204-3, which is mandatory. Its currently approved OMB control number is 3235-0047. An agency may not sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The likely respondents to this information collection are investment advisers registered with the Commission.

The collection of information the brochure rule requires is necessary for several reasons. It enables the client or prospective client to evaluate the adviser’s background and qualifications, and to determine whether the adviser’s services and practices are

appropriate for that client. It informs the client of the nature of the adviser's business, which may inform or limit the client's rights under the advisory contract. It apprises the client of situations in which the interests of the adviser may potentially be adverse to or in conflict with those of the client. Under some circumstances, it enables the client to consider the financial condition of the adviser in deciding whether to entrust funds or securities to the custody of the adviser or whether to pay large advisory fees in advance. The information that rule 204-3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. Responses are not kept confidential.

2. Purposes and Use of the Information Collection

Investors need accurate information about an investment adviser and its practices in order to determine whether to retain, or to continue to employ, that adviser. The Commission and staff need the information in its enforcement, regulatory, and examination programs.

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, has not changed. The Commission currently permits advisers to satisfy their obligations under this collection of information by delivering Part 2 of Form ADV electronically with client consent.¹

¹ See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Advisers Act Release No. 1562 (May 9, 1996) (61 FR 24644 (May 15, 1996)) (publishing Commission interpretive guidance with respect to use of electronic media to fulfill investment advisers' disclosure delivery obligations).

4. Duplication

The collection of information requirements of rule 204-3 are not duplicated elsewhere.

5. Effect on Small Entities

The requirements of rule 204-3 are the same for all investment advisers registered with the Commission, including those that are small entities.² To some extent small advisers may have lesser burdens under rule 204-3. This is because small advisers usually have less complicated business practices, fewer employees, and fewer clients, and therefore their brochures and brochure supplements would be shorter, and would be delivered to fewer clients.

6. Consequences of Not Conducting Collection

The collection of information required by the rule is necessary to protect investors by providing clients and potential clients with information about the adviser, its business, and its conflicts of interest. The consequences of not collecting this information would be that clients and prospective clients may not have the information they need in order to evaluate the adviser's business practices and to determine whether to select or retain that adviser.

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

The collection of information imposes no additional requirements regarding record retention.

² Under Advisers Act rule 0-7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) has assets under management of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession 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.

The Commission requested public comment on the collection of information requirements in rule 204-3 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

9. Payment or Gift

None.

10. Confidentiality

The information collected pursuant to rule 204-3 is by delivery of brochures and brochure supplements to advisory clients and prospective clients. These disclosures are not kept confidential.

11. Sensitive Questions

No PII collected/Not applicable.

12. Burden of Information Collection

Rule 204-3, the “brochure rule,” requires an investment adviser to deliver its brochure and brochure supplements to its new clients or prospective clients before or at the start of the advisory relationship and to deliver annually thereafter the full updated brochure or a summary of material changes to the brochure. The rule also requires that

advisers deliver an amended brochure or brochure supplement (or just a statement describing the amendment) to clients only when disciplinary information in the brochure or supplement becomes materially inaccurate.

The total annual burden currently approved by OMB for rule 204-3 is 466,145 hours. This currently approved burden is based on 11,956 investment advisers registered with the Commission having, on average, an estimated 1,494 clients each.³ We now estimate that 13,173 advisers are registered with the Commission and have a median estimated 78 clients each.⁴ We are updating and revising the total collection of information burden based upon updated data.⁵

We expect that advisers will send their brochure or summary of material changes annually in a “bulk mailing” to clients that may include clients’ account statements,

³ The average number of clients was based on advisers’ responses to Form ADV, Part 1A, Item 5.C.(1) as of January 4, 2016, excluding the three advisers that reported the largest number of clients. Those advisers provided advisory services primarily over the Internet and met their brochure obligations electronically, thus essentially eliminating for those advisers any burden associated with delivery under this rule. Therefore, we believed that it was appropriate to exclude those firms from our calculations.

⁴ The number of investment advisers registered with the Commission is based on advisers’ responses to Form ADV, Part 1A, Items 2.A.(1) through (13) as of March 31, 2019. The median number of clients is based on advisers’ responses to Form ADV, Part 1A, Item 5.D.(a)(1) as of March 31, 2019. In re-evaluating the burdens of rule 204-3, we have made two changes to how we estimate the number of clients. First, instead of using advisers’ responses to Form ADV, Part 1A, Item 5.C.(1) for the data, we are using Item 5.D.(a)(1) of the same Form and Part. We have made this change because Form ADV was amended so that the equivalent data from Item 5.C.(1) is now in Item 5.D.(a)(1). See Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4509 (August 25, 2016) (81 FR 60418 (September 1, 2016)). Second, instead of using the average number of clients, while excluding certain advisers, we have determined to use the median number of clients. We believe that using the median number of clients excludes outliers more appropriately than the average we used for the currently approved burden. For reference, as of March 31, 2019, we estimate that the advisers that are registered with the Commission have, on average, an estimated 2,533 clients each. This average number of clients is based on data from Form ADV, Part 1A, Item 5.D.(a)(1), excluding the three advisers who provided advisory services primarily over the Internet to the largest number of clients. See supra note 3 (discussing the methodology for determining the average number of clients for the currently approved burden).

⁵ These estimates are based on the Form ADVs filed through the IARD system as of March 31, 2019.

periodic reports, or other important documents. We continue to estimate that, with a bulk mailing, an adviser will require no more than 0.02 hours to send the adviser's brochure or summary of material changes to each client, or an annual burden of 1.56 hours per adviser.⁶ Thus, we estimate the total burden hours for 13,173 advisers to distribute their firm brochure to clients annually to be approximately 20,550 hours per year.⁷

Advisers are also required to distribute interim updates disclosing new or revised disciplinary information in their brochure or supplements. We anticipate that in any given year, the number of such interim updates that advisers will be required to deliver is approximately 659.⁸ We further estimate that an adviser will require no more than 0.1 hours per client for delivery of each such update.⁹ This represents about 7.8 hours per interim update.¹⁰ Thus, the aggregate annual hour burden for affected advisers to deliver

⁶ (0.02 hours per client x 78 clients per adviser based on IARD data as of March 31, 2019) = approximately 1.56 hours per adviser. We note that the burden for preparing brochures is already incorporated into a separate burden estimate for Form ADV. We expect that most advisers will make their annual delivery as part of a mailing of an account statement or other periodic report they already make to clients; therefore, we estimate that the additional burden will be adding a few pages to the mailing.

⁷ (0.02 hours per client x 78 clients per adviser) x 13,173 advisers based on IARD data as of March 31, 2019 = approximately 20,550 hours.

⁸ Of the advisers registered with the Commission, 13.33% report disciplinary events on their Form ADVs (as of March 31, 2019, only 1,756 of all 13,173 registered advisers indicated at least one "yes" answer to a question related to disciplinary events in Form ADV, Part 1A, Item 11). Thus, we anticipate that a correspondingly small number of advisers will be required to disclose new or updated disciplinary information. The Commission staff estimates that in any given year, 5% of advisers will be required to deliver a single interim update to each of their clients, resulting in a total of approximately 659 interim updates per year. $0.05 \times 13,173 \times 1 \text{ update} = 659 \text{ updates}$.

⁹ This burden estimate relates only to the amount of time it will take advisers to deliver interim updates to clients, as required by the rule amendments. The burden for preparing interim updates is already incorporated into a separate burden estimate for Form ADV. This mailing may not be included with a mailing of a statement or other periodic report; therefore, we estimate that it will take slightly more time to deliver interim updates than to deliver the annual brochure or summary of material changes.

¹⁰ $0.1 \text{ hours per client} \times 78 \text{ clients per adviser} = \text{approximately } 7.8 \text{ hours per interim update}$.

interim updates to their brochures or supplements will be approximately 5,140 hours per year.¹¹

We estimate that large advisers will need to design and implement systems to track changes in supervised persons providing investment advice to particular clients. We do not expect that such systems will be necessary for small advisers or medium advisers.¹² We estimate that on average each of the 117 large advisers will spend 200 hours per year designing and implementing such systems, for a total of 23,400 hours per year.¹³ Thus, rule 204-3 now results in a total collection of information burden of 49,090 hours per year, or approximately 3.7 hours per adviser.¹⁴ This includes estimated time for large advisers to design and implement systems to track that the right supplements are delivered to the right clients as personnel providing investment advice to those clients change. This represents a decrease of 417,055 hours from the currently approved burden.¹⁵ This decrease in the hourly burden is primarily due to (i) changing how we estimate the number of clients of each adviser by using the median number of clients rather than an average number of clients and (ii) new information on the number of SEC-registered investment advisers that we obtained from Form ADVs filed through the IARD as

¹¹ 659 updates x 7.8 hours = 5,140 hours.

¹² For purposes of the estimates in this section, we have categorized small advisers as those with 10 or fewer employees, medium-sized advisers as those with between 11 and 1,000 employees, and large advisers as those with over 1,000 employees. According to IARD data, only 1.60% of medium advisers report in response to Form ADV, Part 1A, Item 5.B.(1) that more than 250 employees perform investment advisory functions.

¹³ 117 large advisers x 200 hours per year per large adviser = 23,400 hours per year.

¹⁴ 20,550 hours (initial and annual delivery) + 5,140 hours (interim delivery of updates to disciplinary information) + 23,400 (supplement tracking systems) = 49,090 hours. 49,090 hours / 13,173 advisers = approximately 3.7 hours per adviser.

¹⁵ 49,090 hours – 466,145 hours = -417,055 hours.

of March 31, 2019.¹⁶ With the initial, annual, and interim delivery requirements, we estimate that the 13,173 advisers will deliver approximately 1.05 times a year, resulting in approximately 13,832 responses.¹⁷ This represents an increase of 1,278 responses from the currently approved burden of 12,554 responses.¹⁸ We estimate the burden associated with delivery of brochures, supplements, and the summary of material changes would represent an annual monetized cost of \$3,043,580.¹⁹

Table 1: Summary of the Number of Registered Investment Advisers and the Number of Clients of Each Registered Investment Adviser

Description	Requested	Previously Approved	Change
Number of Registered Investment Advisers	13,173	11,956	1,217
Number of Clients of Each Registered Investment Adviser ²⁰	78	1,494	-1,416

¹⁶ See supra note 4, and accompanying text (explaining why we changed how we estimated the number of clients of each adviser as well as the source of the updated data).

¹⁷ 1 response for initial and annual delivery + 0.05 response for annual interim delivery = 1.05 annual responses. 1.05 responses x 13,173 advisers = 13,832 responses. See supra note 8. (discussing that the Commission staff estimates that in any given year, 5% of advisers will be required to deliver a single interim update to each of their clients.)

¹⁸ 13,832 requested responses - 12,554 currently approved responses = 1,278 responses.

¹⁹ Based on data from the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, 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, we expect that delivery requirements of rule 204-3 will most likely be performed by a clerk at an estimated cost for a general clerk of \$62 per hour. 49,090 hours x \$62 = \$3,043,580. We estimate that advisers will not incur any incremental postage costs in these mailings because we assume that advisers will mail annual summary of material changes with another mailing the adviser was already delivering to clients and that advisers were already delivering to clients disclosure of new material disciplinary events on an interim basis under rule 204-3.

²⁰ See supra note 4 (discussing the revised methodology for determining the estimated number of clients of each registered investment adviser).

Table 2: Summary of the Aggregate Annual Time Burden (Hours)

Description	Requested	Previously Approved	Change
Initial and Annual Delivery	20,550	357,245	-336,695
Interim Delivery of Updates to Disciplinary Information	5,140	89,700	-84,560
Supplement Tracking Systems	23,400	19,200	4,200
Total	49,090	466,145	-417,055

Table 3: Summary of the Aggregate Annual Number of Registered Investment Advisers, Number of Responses, Time Burden, and Monetized Time Burden

Description	Requested	Previously Approved	Change
Number of Registered Investment Advisers	13,173	11,956	1,217
Number of Responses	13,832	12,554	1,278
Time Burden (Hours)	49,090	466,145	-417,055
Monetized Time Burden (Dollars) ²¹	\$3,043,580	\$26,570,265	-\$23,526,685

13. Cost to Respondents

\$0.

14. Cost to the Federal Government

There are no costs to the government directly attributable to rule 204-3.

15. Changes in Burden

The estimated total burden hours has decreased from 466,145 to 49,090 hours per year in aggregate, representing a decrease of 417,055 hours per year from the currently approved burden. This revised estimate is primarily due to (i) changing how we estimate the number of clients of each adviser by using the median number of clients rather than

²¹ See *supra* note 19.

an average number of clients and (ii) new information on the number of SEC-registered investment advisers that we obtained from Form ADVs filed through the IARD as of March 31, 2019. The estimated number of annual responses has increased from approximately 12,554 to 13,382, representing an increase of 1,278 responses from the currently approved number of responses. This revised estimate is primarily due to new information on the number of SEC-registered investment advisers that we obtained from Form ADVs filed through the IARD as of March 31, 2019.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exception to Certification Statement for Paperwork Reduction Act Submissions

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.