

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION  
AMENDMENT TO RULE 204-2 UNDER THE ADVISERS ACT**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

On June 5, 2019, the Securities and Exchange Commission (the “Commission” or “SEC”) adopted amendments to Form ADV to add a new Part 3, and related rules, which would require certain registered investment advisers to provide a brief relationship summary to retail investors to inform them about certain aspects of the relationships and services the firm offers.<sup>1</sup> The relationship summary will be subject to Commission filing and recordkeeping requirements, and thus the Commission adopted amendments to rule 204-2 under the Investment Advisers Act of 1940 (the “Advisers Act”).<sup>2</sup> The amendments to rule 204-2 will require registered advisers to retain copies of each relationship summary. Under the amendments to the rule, investment advisers will also be required to maintain each amendment to the relationship summary as well as to make and preserve a record of dates that each relationship summary and each amendment was delivered to any client or to any prospective client who subsequently becomes a client. These records will be 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).

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

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<sup>1</sup> Form CRS Relationship Summary; Amendments to Form ADV, Release Nos. IA-5247; 34-86032 (June 5, 2019) [84 FR 33492 (Jul. 12, 2019)]. The amendments to Form ADV were proposed in Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on use of Certain Names or Titles, Investment Advisers Act Release No. 4888. Exchange Act Release No. 83063 (Apr. 18, 2018) [83 FR 23848 (May 23, 2018)].

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

disseminate certain reports. Advisers Act rule 204-2 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 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 of the Information Collection**

The amendments to rule 204-2 will require registered advisers to retain copies of each relationship summary. Investment advisers will also be required to maintain each amendment to the relationship summary as well as to make and preserve a record of dates that each relationship summary and each amendment was delivered to any client or to any prospective client who subsequently becomes a client. The purpose of the information collection in rule 204-2 is to assist the Commission’s examination and oversight program. Requiring maintenance of the relationship summary as part of rule 204-2 would facilitate the Commission’s ability to inspect for and enforce compliance with firms’ obligations with respect to Form CRS.

The respondents to the rule are investment advisers registered with the Commission. The

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<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.

likely respondents for the amendments to the rule will be the investment advisers registered with the Commission that will be required to prepare and deliver a relationship summary per new rule 204-5 and amendments to Form ADV under the Advisers Act. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.<sup>5</sup> This collection of information is found at 17 CFR 275.204-2 and is mandatory.

### **3. Role of Improved 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. Efforts to Identify Duplication**

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

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

The requirements of the rule are the same for all investment advisers registered with the Commission, including those that are small entities. The requirements of the amendments to rule 204-2 will not distinguish between small entities and other investment advisers because the protections of the Advisers Act are intended to apply equally to retail investor clients of both large and small firms. 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. The

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

<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).

Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

#### **6. Consequences of Less Frequent Collection**

Less frequent information collection will be incompatible with the objectives of the rule and would 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.<sup>7</sup> The retention period will not be affected by the 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 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 With Persons Outside the Agency**

In its release proposing to amend Form ADV to add a new Part 3 (the relationship summary), and to amend rule 204-2, the Commission requested public comment on the effect of

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

information collections under these amendments. The Commission received several comments on the collection of information requirements suggesting that our estimated burdens for the relationship summary recordkeeping obligations were too low. Commenters argued that keeping records of when a relationship summary was given to prospective retail clients would be unnecessarily burdensome or not feasible, these burdens were not adequately considered in the Commission's burden estimates, it would be difficult for firms to integrate pre-relationship delivery dates into firms' operational systems and procedures, and there is no way to track when a disclosure is accessed on a website.

Based on our experience with similar requirements for Form ADV Part 2A brochures, we disagree that retaining these records would be significantly more burdensome for investment advisers than the proposed estimate of 0.2 hours. Advisers already maintain this information with respect to their brochures and should be able to update their systems to also include the relationship summary.

The Commission and the staff of the Division of Investment Management also 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 to Respondents**

None.

**10. Assurance of 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.<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 collects basic Personally Identifiable Information (PII) that may include names, job titles, work addresses, and phone numbers. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier.

### **12. Estimate of Hour Burden**

The approved annual aggregate burden for rule 204-2 is currently 2,199,791 hours, with a total annual aggregate monetized cost burden of approximately \$130,316,112, based on an estimate of 12,024 registered advisers, or 183 hours per registered adviser.<sup>9</sup> Taking into account the estimated annual burden of registered advisers that will be required to maintain records of the relationship summary, as well as the estimated annual burden of registered advisers that do not have relationship summary obligations and whose information collection burden is unchanged, the revised annual aggregate burden for all respondents to rule 204-2, under the amendments, will be 2,435,364<sup>10</sup> hours, represented by a monetized cost of \$154,304,664,<sup>11</sup> based on an

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

<sup>9</sup> 2,199,791 hours / 12,024 registered advisers = 183 hours per adviser. See Form ADV and Investment Advisers Act Rules, Final Rule, Investment Advisers Act Release No. 4509 (Aug. 25, 2016) [81 FR 60418 (Sep. 1, 2016)] ("2016 Form ADV Paperwork Reduction Analysis"), at 81 FR at 60454-55.

<sup>10</sup> 8,235 registered investment advisers required to prepare relationship summary x 183.2 hours = 1,508,652 hours. 5,064 registered investment advisers not required to prepare the relationship summary x 183 hours = 926,712 hours. 1,508,652 hours + 26,712 hours = 2,435,364 hours.

estimate of 8,235 registered advisers with the relationship summary obligation and 5,064 registered advisers without the relationship summary obligation.

Based on Investment Adviser Registration Depository data as of December 31, 2018, there are approximately 13,299 SEC registered advisers required to maintain copies of certain books and records relating to their advisory business. This is an increase of 1,275 SEC registered advisers over the previously approved burden. Only those registered investment advisers offering services to retail investors will be required to prepare and file a relationship summary. We estimate that based on updated IARD data as of December 31, 2018, 8,235 investment advisers provide advice to individual high net worth and individual non-high net worth clients, and would therefore be subject to the amended provisions of rule 204-2 to preserve the relationship summary as a result of the new rule 204-5 and amendments to Form ADV under the Advisers Act.<sup>12</sup>

We estimate that the amendments to rule 204-2 will result in an increase in the collection of information burden estimate by 0.2 hours<sup>13</sup> for each of the estimated 8,235 registered advisers with relationship summary obligations, resulting in a total of 183.2 hours per adviser. This will

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<sup>11</sup> See *infra* note 18.

<sup>12</sup> The adoption includes amendments to Form ADV to add a new Part 3 (the firm relationship summary), and new rule 204-5 regarding delivery of the relationship summary. The hourly and cost burdens for those requirements are included in separate collections of information associated with their respective rules.

<sup>13</sup> In the Paperwork Reduction Act analysis for amendments to Form ADV adopted in 2016, we estimated that 1.5 hours would be required for each adviser to make and keep records relating to (i) the calculation of performance the adviser distributes to any person and (ii) all written communications received or sent relating to the adviser's performance. Because the burden of preparing of the relationship summary is already included in the collection of information estimates for Form ADV, and because the relationship is a short, standardized document, we assume that recordkeeping burden for the relationship summary will be considerably less than 1.5 hours and estimate that 0.2 hours will be appropriate.

yield an annual estimated aggregate burden of 1,508,652 hours under amended rule 204-2 for all registered advisers with relationship summary obligations,<sup>14</sup> representing an aggregate monetized cost of \$95,588,191, or \$11,607 per adviser.<sup>15</sup> In addition, the 5,064 advisers not subject to the amendments will continue to be subject to an unchanged burden of 183 hours under rule 204-2, or a total aggregate annual hour burden of 926,712,<sup>16</sup> for a monetized cost of \$58,716,472, or \$11,595 per adviser.<sup>17</sup>

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<sup>14</sup> 8,235 registered investment advisers required to prepare relationship summary x 183.2 hours = 1,508,652 hours.

<sup>15</sup> As with our estimates relating to the previous amendments to Advisers Act rule 204-2 (*see* 2016 Form ADV Paperwork Reduction Analysis, *supra* note 9, at 81 FR at 60454-55), we expect that performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the 2019 SIFMA Office Salaries in the Securities Industry Report, modified to account for an 1,800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these position are \$70 and \$62, respectively.  $(17\% \times 1,508,652 \text{ hours} \times \$70) + (83\% \times 1,508,652 \text{ hours} \times \$62) = \$95,588,191$ .  $\$95,588,191 / 8,235 \text{ advisers} = \$11,607 \text{ per adviser}$ .

<sup>16</sup> 5,064 registered investment advisers not required to prepare the relationship summary x 183 hours = 926,712.

<sup>17</sup> As with our estimates relating to the previous amendments to Advisers Act rule 204-2 (*see* 2016 Form ADV Paperwork Reduction Analysis, *supra* note 9 at 81 FR at 60454-55), we expect that performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the 2019 SIFMA Office Salaries Report suggest that costs for these positions are \$70 and \$62, respectively.  $(17\% \times 926,712 \text{ hours} \times \$70) + (83\% \times 926,712 \text{ hours} \times \$62) = \$58,716,473$ .  $\$58,716,473 / 5,064 = \$11,595 \text{ per adviser}$ .



**Table 1: Summary of Annual Responses, Burden Hours, and Burden Hour Costs Estimates for Rule 204-2**

IC	Rule 204-2 under the Investment Advisers Act of 1940	Annual No. of Responses			Annual Time Burden (Hrs.)			Monetized Time Burden (\$)		
		<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>	<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>	<i>Previously approved</i>	<i>Requested Change Due to Agency Discretion</i>	<i>Total</i>
IC1	Recordkeeping and Recordretention	12,024	13,299	1,275	2,199,791	2,435,364	235,573	130,316,112	154,304,664	23,988,552
<b>Total for IC</b>		12,024	13,299	1,275	2,199,791	2,435,364	235,573	130,316,112	154,304,664	23,988,552

### **13. Estimate of Total Annual Cost Burden**

There is no cost burden other than the cost of the hour burden described above.

### **14. Estimate of Cost to the Federal Government**

There are no additional costs to the federal government directly attributable to rule 204-2.

### **15. Explanation of Changes in Burden**

We estimate that the total burden hour associated with rule 204-2 will increase from 2,199,791 hours per year to 2,435,364 hours per year and an increase from \$130,316,112 per year to \$154,304,664 in monetized cost,<sup>18</sup> because of the amendments to rule 204-2.<sup>19</sup> This represents an increase of 235,573<sup>20</sup> annual aggregate hours in the hour burden and an annual increase of \$23,988,552 from the currently approved total aggregate monetized cost for rule 204-2.<sup>21</sup> These increases are attributable to a larger registered investment adviser population since the most recent approval and adjustments for inflation, as well as the rule 204-2 amendments relating to the relationship summary.

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

None.

### **17. Approval to not Display Expiration Date**

Not Applicable.

### **18. Exceptions to Certification Statement**

Not Applicable.

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<sup>18</sup>  $\$95,588,191 + \$58,716,473 = \$154,304,664.$

<sup>19</sup> *See supra* note **Error! Bookmark not defined.**

<sup>20</sup>  $2,435,364 \text{ hours} - 2,199,791 \text{ hours} = 235,573 \text{ hours}.$

<sup>21</sup>  $\$154,304,664 - \$130,316,112 = \$23,988,552.$

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

Not applicable.