

SUPPORTING STATEMENT

**For the Paperwork Reduction Act Information Collection Submission for
Amendments to Rule 204-2 under the Investment Advisers Act of 1940**

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 204 of the Investment Advisers Act of 1940 (the “Advisers Act”) provides that investment advisers required to register with the Securities and Exchange Commission (the “Commission” or “SEC”) must make and keep certain records for prescribed periods, and make and disseminate certain reports.¹ Advisers Act rule 204-2 sets forth mandatory requirements for maintaining and preserving specified books and records.² The records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years.³ These requirements constitute a mandatory “collection of information,” within the meaning of the Paperwork Reduction Act.

On February 9, 2022, the Commission proposed rules related to cybersecurity risk management for registered investment advisers, registered investment companies, and business development companies as well as amendments to certain rules that govern investment adviser and fund disclosures under the Advisers Act and the Investment Company Act of 1940.⁴ As part of the proposed cybersecurity risk

¹ 15 U.S.C. 80b-4.

² 17 CFR 275.204-2.

³ *See id.*, at 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.

⁴ Cybersecurity Risk Governance and Incident Disclosure, Securities Act Release No. 11028 (Feb. 9, 2022) available at <https://www.sec.gov/rules/proposed/2022/33-11028.pdf> (“Cybersecurity Risk Governance and Incident Disclosure Proposal”).

management rules, the Commission proposed corresponding amendments to rule 204-2, the books and records rule. The proposed amendments would require advisers to retain: (1) a copy of their cybersecurity policies and procedures formulated pursuant to proposed rule 206(4)-9 that is in effect, or at any time within the past five years was in effect; (2) a copy of the adviser's written report documenting the annual review of its cybersecurity policies and procedures pursuant to proposed rule 206(4)-9 in the last five years; (3) a copy of any Form ADV-C filed by the adviser under rule 204-6 in the last 5 years; (4) records documenting the occurrence of any cybersecurity incident, as defined in rule 206(4)-9(c), occurring in the last five years, including records related to any response and recovery from such an incident; and (5) records documenting any risk assessment conducted pursuant to the cybersecurity policies and procedures required by rule 206(4)-9(a)(1) in the last five years.⁵ These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities. The information generally is kept confidential subject to the applicable law.⁶

The collection has been previously approved and subsequently extended under Office of Management and Budget ("OMB") control number 3235- 0278 (expiring October 31, 2022), 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.

⁵ See proposed rule 204-2(a)(17)(i) through (vii).

⁶ See section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

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. Requiring the creation, maintenance and retention of the above records as part of rule 204-2 would facilitate the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the proposed cybersecurity risk management rules.

The respondents to the rule 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 applicable law.⁷ 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 currently permits advisers to maintain records required by the rule through electronic media.⁸

4. Efforts to Identify Duplication

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

⁷ See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

⁸ See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release No. 1945 (May 24, 2001) 66 FR 29224 (May 30, 2001).

rule-based reporting and recordkeeping requirements for duplication, and reevaluates these requirements whenever it adopts amendments to its rules.

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 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 Not Conducting 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. 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 Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment management industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. In addition, the Commission has requested public comment on the proposed amendments to rule 204-2, including the collection of information requirements resulting from the proposed amendments. Before adopting these amendments, the Commission will receive and evaluate public comments on the proposed amendments and their associated collection of information requirements.

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 subject to the applicable law.

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 and Cost Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁹ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. All such advisers will be subject to the proposed amendments to rule 204-2. As of October 31, 2021, there were 14,774 advisers that would be subject to these requirement. In our most recent Paperwork Reduction Act submission for rule 204-2, we estimated for rule 204-2 a total annual aggregate hour burden of 2,764,563 hours, and the total annual aggregate external cost burden is \$175,980,426.¹⁰ The table below summarizes the

⁹ 44 U.S.C. 3501 *et seq.*

¹⁰ Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204-2, OMB Report, OMB 3235-0278 (Aug. 2021).

initial and ongoing annual burden estimates associated with the proposed amendments to rule 204-2.¹¹

¹¹ We estimate the hourly wage rate for compliance clerk is \$70 and a general clerk is \$62. The hourly wages used are from the SIFMA Wage Report.

Table 1: Rule 204-2 PRA Estimates

	Internal Hour Burden		Wage Rate	Internal Time Costs	Annual External Cost Burden
PROPOSED ESTIMATES FOR RULE 204-2 AMENDMENTS					
Retention of cybersecurity policies and procedures	1	×	\$68 (blended rate for general clerk and compliance clerk)	\$68	\$0
Total burden per adviser				\$68	\$0
Total number of affected advisers	×	14,774		×	14,774
Sub-total burden	14,774 hours			\$1,004,632	\$0
Retention of written report documenting annual review	1	×	\$68 (blended rate for general clerk and compliance clerk)	\$68	\$0
Total annual burden per adviser	1			\$68	\$0
Total number of affected advisers	×	14,774		×	14,774
Sub-total burden	14,774 hours			\$1,004,632	\$0
Retention of copy of any Form ADV-C filed in last 5 years	1	×	\$68 (blended rate for general clerk and compliance clerk)	\$68	\$0
Total annual burden per adviser	1			\$68	\$0
Total number of affected advisers	×	14,774		×	14,774
Sub-total burden	14,774 hours			\$1,004,632	\$0
Retention of records documenting a cybersecurity incident	1	×	\$68 (blended rate for general clerk and compliance clerk)	\$68	\$0
Total annual burden per adviser	1			\$68	\$0
Total number of affected advisers	×	14,774		×	14,774
Sub-total burden	14,774 hours			\$1,004,632	\$0
Retention of records documenting an adviser's cybersecurity risk assessment	1	×	\$68 (blended rate for general clerk and compliance clerk)	\$68	\$0
Total annual burden per adviser	1			\$68	\$0
Total number of affected advisers	×	14,774		×	14,774
Sub-total burden	14,774 hours			\$1,004,632	\$0
Total annual aggregate burden of rule 204-2 amendments per adviser	5 hours			\$340	\$0
Current annual estimated aggregate burden of rule 204-2	2,764,563 hours			\$175,980,426	\$0
Total annual aggregate burden of rule 204-2	3,049,945 hours			\$194,470,162	\$0

The approved annual aggregate burden for rule 204-2 is currently 2,764,563 hours, based on an estimate of 13,724 registered advisers, or 201.44 hours per registered adviser. We estimate that the proposed amendments to the recordkeeping rule will result in an aggregate increase in the collection of information burden estimate by 5 hours for each of the estimated 14,774 registered advisers, resulting in a total of 206.44 hours per adviser, for a new total annual burden of 3,049,945 in the aggregate.

The Cybersecurity Risk Governance and Incident Disclosure Proposal PRA estimated that the new total annual burden would be 2,838,433 in the aggregate. As noted in the chart above, we have revised this estimate to 3,049,945 to reflect that the hour burden per adviser (206.44) would apply to the updated adviser estimate (14,774). The 2,838,433 estimate in the Cybersecurity Risk Governance and Incident Disclosure Proposal PRA added the total annual aggregate burden of the rule 204-2 amendments (73,870 hours or 5 hours per 14,774) to the currently approved estimated aggregate burden of rule 204-2 (2,764,563). This generated the 2,838,433 estimate, which we have proposed to correct herein.

The approved annual aggregate internal monetized cost burden for rule 204-2 is currently \$175,980,426, based on an estimate of 13,724 registered advisers, or approximately \$12,823 per registered adviser. We estimate that the proposed amendments to the recordkeeping rule will result in an aggregate increase in the collection of information internal monetized cost by \$340 for each of the estimated 14,774 registered advisers, resulting in a total of \$13,163 per adviser, for a new total internal monetized cost of \$194,470,162.

The Cybersecurity Risk Governance and Incident Disclosure Proposal PRA estimated that the new total annual internal monetized costs would be \$181,003,586 in the aggregate. As noted in the chart above, we have revised this estimate to \$194,470,162 to reflect that the internal cost per adviser (\$13,163) would apply to the updated adviser estimate (14,774). The \$181,003,586 estimate in the Cybersecurity Risk Governance and Incident Disclosure Proposal PRA added the total annual internal cost of the rule 204-2 amendments (\$5,023,160 or \$340 per 14,774) to the currently approved estimated aggregate internal monetized cost of rule 204-2 (2,764,563). This generated the \$181,003,586 estimate, which we have proposed to correct herein.

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of rule 204-2, such as for the services of outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience.

As summarized in Table 1 above, we estimate that the annual external cost associated with the proposed amendments to rule 204-2 is \$0.

14. Cost to the Federal Government

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

15. Change in Burden

We estimate that amendments to rule 204-2 will result in a revised annual aggregate burden of 3,049,945 hours per year, with a monetized value of \$194,470,162. This would be an aggregate increase of 285,382 hours, or \$18,489,736 in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates. The changes are due to proposed amendments and updated data. The external cost burden associated with rule 204-2 (\$0) has not changed.

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.