

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 204-6

A. JUSTIFICATION

1. Necessity for the Information Collection

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 Investment Advisers Act of 1940 and the Investment Company Act of 1940 (“Investment Company Act”).¹ The proposed rules and amendments are designed to enhance the cybersecurity hygiene and preparedness of advisers and funds and improve their resilience against cybersecurity threats and attacks, while also improving the cybersecurity-related disclosures advisory clients and fund investors receive and enhancing the Commission’s ability to oversee advisers and funds and assess systemic risks.

The Commission proposed new rule 204-6 (“rule 204-6”) under the Investment Advisers Act to require advisers to report on new Form ADV-C a significant adviser cybersecurity incident or a significant fund cybersecurity incident. Rule 204-6 would define a significant adviser cybersecurity incident as a cybersecurity incident, or a group of related incidents, that significantly disrupts or degrades the adviser’s ability, or the ability of a private fund client of the adviser, to maintain critical operations, or leads to the unauthorized access or use of adviser information, where the unauthorized access or use of such information results in: (1) substantial harm to the adviser, or (2) substantial harm to a client, or an investor in a private fund, whose

¹ 15 U.S.C. 80a-1 *et seq.*; 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”).

information was accessed.² Proposed rule 204-6 would also require advisers to amend promptly any previously filed Form ADV-C in the event information reported on the form becomes materially inaccurate; if new material information about a previously reported incident is discovered; and after resolving a previously reported incident or closing an internal investigation pertaining to a previously disclosed incident.

The paperwork burdens associated with proposed Form ADV-C are not included in this collection of information for rule 204-6 and thus proposed Form ADV-C has a separate collection of information submission.

2. Purpose and Use of the Information Collection

The purpose of the information collection requirements in rule 204-6 is to help the Commission in its effort to protect investors in connection with cybersecurity incidents by providing prompt notice of these incidents to the Commission. This information collection would allow the Commission and its staff to understand the nature and extent of a particular cybersecurity incident and the firm's response to the incident.

This information collection would not only help the Commission monitor and evaluate the effects of the cybersecurity incident on an adviser and its clients or a fund and its investors, but also assess the potential systemic risks affecting financial markets more broadly. This collection of information would also help the Commission's examination and oversight program efforts in identifying patterns and trends across registrants regarding such incidents.

² See proposed rule 204-6(b).

3. Consideration Given to Information Technology

Rule 204-6 requires the electronic filing of Form ADV-C with the Commission through the Investment Adviser Registration Depository (“IARD”) platform. The IARD platform is an Internet-based system that investment advisers access through computers in their offices, without the need for specialized software or hardware. The information advisers submit to the IARD is stored in a database. Collecting information electronically through the IARD platform is designed to reduce the regulatory burden upon investment advisers by providing a convenient portal for quickly transmitting reports and filings.

4. Duplication

The collection of information requirements of rule 204-6 are not duplicated elsewhere. While the proposed amendments to Form ADV requiring advisers to provide clients and prospective clients with information regarding an adviser’s cybersecurity risks and significant cybersecurity incidents that have occurred in the past two years may require firms to summarize certain topics also subject to collection of information under rule 204-6, rule 204-6 has a distinct purpose to help the Commission monitor and evaluate the effects of the cybersecurity incident on an adviser and its clients or a fund and its investors and assess the potential systemic risks affecting financial markets more broadly. The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates these requirements whenever it adopts amendments to its rules.

5. Effect on Small Entities

Advisers, regardless of their size, are subject to the requirements of rule 204-6. Reporting of significant adviser cybersecurity incidents and significant fund cybersecurity incidents is essential for advisers of all sizes. Because the protections of the Advisers Act are intended to apply equally to retail investor clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the new requirements. Thus, rule 204-6 does not inappropriately burden small entities. The Commission believes that it could not adjust the rule to lessen the burden on small entities of complying with the rule without jeopardizing the interests of investors. 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 would be incompatible with the objectives of rule 204-6. The collection of information is necessary to ensure that the Commission promptly receives information regarding significant adviser cybersecurity incidents and significant fund cybersecurity incidents. The consequences of not collecting this information would be that the Commission may not have the information needed to protect investors, to monitor and evaluate the effects of the cybersecurity incident, and to assess any potential systemic risks affecting financial markets more broadly.

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

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

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 rule 204-6, including the collection of information requirements resulting from the proposed rule. Before adopting the rule, the Commission will receive and evaluate public comments on the proposed rule and its associated collection of information requirements.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

Responses to the information collection will be kept confidential to the extent permitted by law. Rule 204-6 would require disclosure of non-public information, the public disclosure of which could adversely affect advisers (and advisory clients) and funds (and their investors). Keeping information related to a cybersecurity incident confidential may serve to guard against the premature release of sensitive information, while still allowing the Commission to have early notice of the cybersecurity incident.

11. Sensitive Questions

Rule 204-6 elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors. A System of Records Notice that covers the collection of information has been published in the Federal Register at 83 FR 6892 and can also be found at

<http://www.sec.gov/about/privacy/secprivacyoffice.htm>. Instructions for obtaining the Privacy Impact Assessment for IARD can be found at

<http://www.sec.gov/about/privacy/secprivacyoffice.htm>.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995³ and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

Rule 204-6 would require investment advisers to report on new Form ADV-C a significant adviser cybersecurity incident or a significant fund cybersecurity incident. The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. This requirement is mandatory, and all registered investment advisers will be subject to the requirements of the proposed rule. Responses provided to the Commission would be kept confidential subject to the provisions of applicable law. This collection of information would help the Commission's examination and oversight program efforts in identifying patterns and trends across registrants regarding such incidents. As of

³ 44 U.S.C. 3501 et seq.

October 31, 2021, there were 14,774 registered advisers that would be subject to this reporting requirement. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule’s reporting requirement.

Table 1: Burden Estimates for Rule 204-6

	Internal initial burden hours	Internal annual burden hours		Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES						
Making a determination of significant cybersecurity incident	3 hours	3 hours ¹	×	\$353 (blended rate for assistant general counsel, compliance manager and systems analyst)	\$1,059	\$1,488 ²
Amending Form ADV-C as required (e.g., if any of the information previously filed on Form ADV-C becomes materially inaccurate)	1 hour	1 hour	×	\$396 (blended rate for assistant general counsel and compliance manager)	\$396	\$496 ³
Total new annual burden per adviser		4 hours			\$1,455	\$1,984
Number of advisers		×	14,774		×	14,774
Total new aggregate annual burden		59,096 hours			\$21,496,170	\$29,311,616

Notes:

1. Includes initial burden estimates annualized over a three-year period, plus 2 ongoing annual burden hours. The estimate of 6 hours is based on the following calculation: ((3 initial hours / 3) + 2 additional ongoing burden hours) = 3 hours.
2. This estimated burden is based on the estimated wage rate of \$496/hour, for 3 hours, for outside legal services. The Commission’s estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation. The Commission’s estimates of the relevant wage rates are based on salary information for the securities industry compiled by Securities Industry and Financial Markets Association’s Office Salaries in the Securities Industry 2013, as modified by Commission staff for 2020. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
3. This estimated burden is based on the estimated wage rate of \$496/hour, for 1 hour, for outside legal services.

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of rule 204-6, 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, Commission staff estimates that the annual cost of outside services associated with rule 204-6 is approximately \$1,984 per adviser and the total annual external cost burden for rule 204-6 is \$29,311,616.

14. Cost to the Federal Government

There are no costs to the government directly attributable to the rule.

15. Change in Burden

New collection.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date for OMB approval.

18. Exceptions to Certification Statement for Paperwork Reduction Act

Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.