

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 206(4)-9

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 206(4)-9 (“rule 206(4)-9”) under the Investment Advisers Act to require advisers to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks. Rule 206(4)-9 enumerates certain general elements that advisers would be required to address in their cybersecurity policies and procedures including risk assessment, user security and access, information protection, threat and vulnerability management, and cybersecurity incident response and recovery. Under the rule, an adviser would also, at least annually: (1) review and assess the design and effectiveness of those policies and procedures; and (2) prepare a written report that, at a minimum, describes the

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”).

review, assessment, and any control tests performed, explains their results, documents any cybersecurity incident that occurred since the date of the last report, and discusses any material changes to the policies and procedures since the date of the last report. Finally, an adviser would need to keep records related to the policies and procedures, written reports, annual review, and any reports provided to the Commission.

2. Purpose and Use of the Information Collection

The purpose of the information collection requirements in rule 206(4)-9 is to ensure that advisers maintain comprehensive, written internal compliance programs that promote cybersecurity hygiene and preparedness. The information collections also assist the Commission's examination staff in assessing the adequacy of advisers' compliance programs.

3. Consideration Given to Information Technology

Rule 206(4)-9 does not require the reporting of any information or the filing of any documents with the Commission. Proposed amendments to rule 204-2, however, would require an adviser maintain: (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.²

4. Duplication

Rule 206(4)-9 would impose a requirement that advisers have in place written compliance policies and procedures on cybersecurity. Advisers also are subject to certain requirements elsewhere in the federal securities laws that require them to maintain written policies and procedures, including rule 206(4)-7 under the Investment Advisers Act. The staff believes, however, that any duplication of recordkeeping requirements is limited, as rule 206(4)-9 would require policies and procedures specific to cybersecurity. Moreover, rule 206(4)-9 does not require advisers to maintain duplicate copies of records covered by these more targeted requirements, and an adviser's compliance policies and procedures are not required to be maintained in a single location. The staff believes, therefore, that any duplication of regulatory requirements does not impose significant additional costs on advisers. The Commission periodically evaluates rule-based recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule.

5. Effect on Small Entities

Advisers, regardless of their size, are subject to the requirements of rule 206(4)-9. Effective cybersecurity risk management is essential for advisers of all sizes. Rule 206(4)-9 affords advisers the flexibility to tailor their cybersecurity risk program to the nature of their business. Small advisers, which generally have less complex and more limited operations, likely

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

need less extensive cybersecurity risk programs than their larger counterparts. Thus, rule 206(4)-9 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 206(4)-9. The annual reviews required under rule 206(4)-9 are integral to detecting and correcting any gaps in the program before irrevocable or widespread harm is inflicted upon investors, and extending the time between reviews increases the likelihood that such harm could go unchecked.

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

Rule 206(4)-9 requires advisers to maintain their internal compliance policies and procedures and documents related to the annual review of those policies and procedures for at least five years. Although this period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2)(iv), the staff believes that this is warranted because the rule contributes 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 rule 206(4)-9, including the collection of information requirements resulting from the proposed rule. 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

No payment or gift to respondents was provided.

10. Confidentiality

If information collected pursuant to rule 206(4)-9 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

11. Sensitive Questions

No information of a sensitive nature is required under this collection of information. The information collection does not collect personally 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 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.

Proposed rule 206(4)-9 would require an adviser to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks. Each requirement to disclose information, offer to provide information, or to adopt policies and procedures constitutes a collection of information requirement under the Paperwork Reduction Act. The respondents to these collection of information requirements would be investment advisers that are registered or required to be registered with the Commission. As of October 31, 2021, there were 14,774 investment advisers registered with the Commission. These requirements are mandatory, and all registered investment advisers would be subject to the requirements of the proposed rule. Responses provided to the Commission in the context of its examination and oversight program concerning proposed rule 206(4)-9 would be kept confidential subject to the provisions of applicable law. The table below summarizes the initial and ongoing annual burden and cost estimates associated with the proposed rule.

³ 44 U.S.C. 3501 et seq.

Table 1: Burden Estimates for Rule 206(4)-9

	Internal initial burden hours	Internal annual burden hours ¹	Wage rate ²	Internal time costs	Annual external cost burden
PROPOSED RULE 206(4)-9 ESTIMATES					
Adopting and implementing policies and procedures ³	50 hours	21.67 hours ⁴	\$396 (blended rate for compliance attorney and assistant general counsel)	\$8,581.32	\$1,488 ⁵
Annual review of policies and procedures and report of review	0 hours	10 hours ⁶	\$396 (blended rate for compliance attorney and assistant general counsel)	\$3,960	\$1,984 ⁷
Total new annual burden per adviser		31.67 hours		\$12,541.32	\$3,472
Number of advisers		× 14,774		× 14,774	× 14,774
Total new annual aggregate burden		320,152.58 hours		\$185,285,462	\$51,295,328

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. 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 ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
3. Includes initial burden estimates annualized over a three-year period, plus 5 ongoing annual burden hours. The estimate of 25 hours is based on the following calculation: ((60 initial hours / 3) + 5 additional ongoing burden hours) = 25 hours.
4. This estimated burden is based on the estimated wage rate of \$496/hour, for 12 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.
5. Includes initial burden estimates annualized over a three-year period, plus 8 ongoing annual burden hours. The estimate of 6 hours is based on the following calculation: ((9 initial hours / 3) + 3 additional ongoing burden hours) = 6 hours.
6. This estimated burden is based on the estimated wage rate of \$496/hour, for 2 hours, for outside legal services. See *supra* footnote 4 (regarding wage rates with respect to external cost estimates).
7. Includes all registered investment companies, plus BDCs.

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of rule 206(4)-9, 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 206(4)-9 is approximately \$3,472 per adviser and the total annual external cost burden for rule 206(4)-9 is \$51,295,328.

14. Cost to the Federal Government

Rule 206(4)-9 does not impose a cost on the federal government. Rule 206(4)-9 does not require advisers to file any documents with the Commission. However, the Commission staff may records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

15. Change in Burden

New collection.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

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

The Commission is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.