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 to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business day after the trade date ("T+1").[4] To facilitate a T+1 standard settlement cycle, the Commission also proposed new requirements for the processing of institutional trades by broker-dealers, investment advisers, and

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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 Shortening the Securities Settlement Transaction Cycle, Investment Advisers Act Release No. 5957 (Feb. 9, 2022) [87 FR 10436 (Feb. 24, 2022)] available at https://www.sec.gov/rules/proposed/2022/34-94196.pdf ("Proposing Release").

certain clearing agencies. First, the Commission proposed to amend rule 15c6-1 under the Securities Exchange Act of 1934 ("Exchange Act") ("rule 15c6-1")[5] to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1 and to repeal the T+4 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. Second, the Commission proposed new rule 15c6-2 under the Exchange Act ("rule 15c6-2") to prohibit broker-dealers from entering into contracts with their institutional customers unless those contracts require that the parties complete allocations, confirmations, and affirmations by the end of the trade date, a practice the securities industry has commonly referred to as "same-day affirmation".[6] Third, the Commission proposed to amend rule 204-2 under the Advisers Act to require registered investment advisers that are parties to contracts under rule 15c6-2 to make and keep records of their allocations, confirmations, and affirmations described in rule 15c6-2. Fourth, the Commission proposed rule 17Ad-27 under the Exchange Act to require a clearing agency that is a central matching service provider to establish policies and procedures to facilitate straight-through processing.[7]

Under proposed rule 15c6-2, a broker-dealer would be prohibited from entering into a contract on behalf of a customer for the purchase or sale of certain securities unless it has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof to be

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5 17 CFR 240.15c6-1.

6 Proposed rule 17 CFR 240.15c6-2.

7 Proposed rule 17 CFR 240.17Ad-27.

completed no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with proposed rule 15c6-1(a).[8] Investment advisers, as customers of a broker or dealer, may become a party to such an agreement.[9] Accordingly, the Commission proposed an amendment to rule 204-2 that is designed to ensure that registered investment advisers that are parties to contracts under proposed rule 15c6-2 retain records of confirmations received, and keep records of the allocations and affirmations sent to a broker or dealer.[10]

Specifically, the Commission proposed to amend rule 204-2 by adding a requirement in paragraph (a)(7)(iii) that advisers maintain records of each confirmation received, and any allocation and each affirmation sent, with a date and time stamp for each allocation (if applicable) and affirmation that indicates when the allocation or affirmation was sent to the broker or dealer if the adviser is a party to a contract under proposed rule 15c6-2.[11] As with other records required under rule 204-2(a)(7), advisers would be required to keep originals of confirmations, and copies of allocations and affirmations, described in the proposed rule, but may maintain records electronically if they satisfy certain conditions.

We believe that requiring these records and requiring a time and date stamp of all affirmations and any applicable allocations (but not confirmations) would help advisers establish that they have timely met contractual obligations under proposed

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8 *See* Proposing Release, *supra* note 4, at Section III.B.

9 *See id.*, at Section III.C.

10 *See id*.

11 *See* proposed rule 204-2(a)(7)(iii).

rule 15c6-2 and ultimately help ensure that trades involving such advisers would timely settle on T+1.[12] In addition, we believe the proposed requirement would aid the Commission staff in preparing for examinations of investment advisers and assessing adviser compliance.[13] The information generally is kept confidential subject to the applicable law.[14]

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.

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 help the Commission staff in preparing for examinations of investment advisers and assessing adviser compliance. In addition, it would help advisers establish that they have timely met contractual obligations under proposed rule 15c6-2 and ultimately help ensure that trades involving such advisers would timely settle on T+1.

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12 *See* Proposing Release, *supra* note 4, at Section III.C.

13 See *id*.

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

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.[15] 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.[16]

4. Duplication

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

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 proposed amendment to rule 204-2 would not distinguish between small entities and other investment advisers because the protections of the Advisers Act are intended to

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

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

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, or longer than, 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 amendment to rule 204-2, including the collection of information requirements resulting from the proposed amendment. Before adopting this amendment, the Commission will receive and evaluate public comments on the proposed amendment 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.[17]

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

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

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 1995[18] 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 December, 2020, there were approximately 13,804 advisers registered with the Commission.[19] The Commission further estimates that 2,521 of these registered advisers would not be required to make and keep the proposed required records because they do not have any institutional advisory clients.[20] Therefore, the remaining 11,283 of these advisers, or 81.74% of the total registered advisers that are subject to rule 204-2, would enter a contract with a broker or dealer under proposed rule 15c6-2 and therefore be subject to the related proposed recordkeeping amendment.

Based on staff experience, the Commission expects that many advisers already have recordkeeping processes in place to retain records of confirmations received,

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18 44 U.S.C. 3501 *et seq*.

19 Based on data from Form ADV as of December, 2020.

20 *See* Proposing Release, *supra* note 4, at Section VI.A.

and allocations and affirmations sent to brokers or dealers.[21] The Commission expects that while these are customary and usual business practices for many advisers, some small and mid-size advisers do not currently retain these records. Further, the Commission estimates that the vast majority of these books and records are kept in electronic fashion in a trade order management or other recordkeeping system, through system logs of file transfers, email archiving or as part of DTC's Institutional Trade Processing services, but that some advisers maintain paper records (e.g., confirmations) and/or communicate allocations by telephone. In addition, we estimate that up to 70% of institutional trades are affirmed by custodians, and therefore advisers may not retain or have access to the affirmations these custodians sent to brokers or dealers.[22] Also, based on staff experience, the Commission expects that many advisers send allocations and affirmations electronically to brokers or dealers, and therefore these records are already date and time stamped in many instances.[23] Nevertheless, the proposed amendments would explicitly add a new requirement to date and time stamp allocations and affirmations (but not confirmations), and thus increase this collection of information burden. The Commission estimates that the associated increase in burden would be included in our estimate described in the chart below for advisers that we expect do not electronically send allocations and affirmations to their brokers or dealers.

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21 *See id*., at Section III.C.

22 *See id*., at footnote **Error! Bookmark not defined.** (discussion of DTCC ITP Forum Remarks).

23 *See id*., at Section III.C.

We describe the estimated burdens associated with the proposed recordkeeping amendment below. These estimated changes from the currently approved burden are due to the estimated increase in the internal hour and internal time cost burden that would be due to the proposed amendment, and the increase in the number of registered investment advisers (an increase of 80 advisers).

Table 1: Summary of burden estimates for the proposed amendment to Rule 204-2.

Advisers	Initial internal hour burden	Annual internal hour burden[1]	Wage rate[2]	Internal time cost per year	Annual external cost burden[3]
220 small and mid-size advisers that have institutional clients, that we expect do not currently maintain the proposed records[4]	2 hours per adviser[5]	2 hours, amortized over a 3 year period, for an annual ongoing internal burden of 0.667 hours per year (220 advisers x 0.667 hours each = 146.74 aggregate annual hours)	$69.36 per hour	0.667 hour x $69.36 per hour = $43.60 per adviser per year. $69.36 x 146.74 aggregate hours = $10,159.16 aggregate cost per year.	$0
113 advisers that have institutional clients that staff estimates do not send allocations or affirmations electronically to brokers or dealers (e.g., they communicate with them by telephone)[6]	2 hours per adviser[7]	2 hours, amortized over a 3 year period, for an annual ongoing internal burden of 0.667 hours per year (113 advisers x 0.667 hours each = 75.37 aggregate annual hours)	$69.36 per hour	0.667 hour x $69.36 per hour = $43.60 per adviser per year. $69.36 per hour x 75.37 aggregate hours = $5,227.67 aggregate cost per year.	$0
7,898 advisers with institutional clients that the staff estimates make institutional trades that are affirmed by custodians, and therefore do not maintain the proposed affirmations[8]	2 hours per adviser[9]	2 hours, amortized over a 3 year period, for an annual ongoing internal burden of 0.667 hours per year (7,898 advisers x 0.667 hours each = 5,267.97 aggregate hours)	$69.36 per hour	0.667 hour x $69.36 per hour = $43.60 per adviser per year. $69.36 per hour x 5,267.97 aggregate hours = $365,386.40 Aggregate cost per year.	$0
Total estimated burden per adviser per year resulting from the proposed amendment		5,490.08 aggregate hours per year,[10] or 0.4 blended hours per year per adviser[11]	$380,791.95 per year (5,490.08 aggregate hours per year x $69.36 per hour)		$0
Currently approved aggregate burden		2,764,563 aggregate hours per year	$175,980,426		$0
Estimated revised aggregate burden		2,786,199 hours[12]	$193,250,787.60[13]		$0

Notes:

1. We expect that the estimated internal hour burdens associated with the proposed amendment would be one-time initial burdens, and we amortize these burdens over three years.

2. As with our estimates relating to the previous amendments to Advisers Act rule 204-2, the Commission expects that performance of these functions would 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 SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these position are $76 and $68, respectively. A blended hourly rate is therefore: (.17 x $76) + (.83 x $68) = $69.36 per hour.

3. Under the currently approved PRA for rule 204-2, there is no cost burden other than the cost of the hour burden described herein, and we expect that the proposed amendment would not result in any cost burden other than the cost of the hour burden.

4. Based on staff experience, we estimate that approximately 50% of small and mid-sized registered investment advisers that have institutional clients, do not currently maintain the proposed records. Based on Form ADV data as of December 2020, we estimate that there are 199 and 241 mid-sized and small entity RIAs, respectively, that would be required to retain the proposed new records, for a total of 440 advisers (these are advisers that report the following on Form ADV Part 1A as of December 2020: (i) having any clients that are registered investment companies in response to Item 5.D, (ii) having any institutional separately managed accounts in Item 5.D., or separately managed account exposures in Section 5.K.(1) of Schedule D, or (iii) advising any reported hedge funds as per Section 7.B.(1) of Schedule D). The categories of mid-size and small entity advisers are based on responses to the following Items of Form ADV Part 1A: Item 2.a.(2) (mid-size RIA) and Items 5.F. and 12 (small entity). 50% of 440 advisers = 220 advisers.

5. We estimate an initial burden of 2 hours per adviser, to update procedures and instruct personnel to retain the proposed required records in the advisers' electronic recordkeeping systems, including any confirmations that they may receive in paper format and do not currently retain. We expect that these advisers already have recordkeeping systems to accommodate these records, which would include, at a minimum, spreadsheet formats and email retention systems which have an ability to capture a date and time stamp. For those advisers maintaining date and time stamped electronic records already, we estimate no incremental compliance costs.

6. We estimate that only a small number of advisers, or 1% of advisers that have institutional clients, do not send allocations or affirmations electronically to brokers or dealers (e.g., they communicate with them by telephone). 1% of 11,283 RIAs with institutional clients = 112.83 advisers (rounded to 113). For new large advisers, we estimate that there would be no incremental cost associated with this proposed amendment, as we expect these advisers would implement electronic systems as part of their initial compliance with rule 204-2, and that these electronic systems would have an ability to capture a date and time stamp.

7. We estimate that these advisers would incur an initial burden of 2 hours of updating their procedures and training their personnel to send these communications through their existing electronic systems (such as, at a minimum, their current spreadsheet formats and current email and electronic retention system to maintain electronic records with date and time stamps). Because these email and electronic retention systems would provide date and time stamps, we estimate there would be no incremental compliance costs in connection with the proposed date and time stamp requirement.

8. As noted above, we estimate that 70% of institutional trades are affirmed by custodians, and therefore advisers may not retain or have access to the affirmations these custodians sent to brokers or dealers. We expect that some of these advisers themselves, however, sometimes send affirmations to brokers or dealers. Because we do not know the number of advisers that correlate to these trades, we estimate for purposes of this collection of information that 70% of advisers with institutional clients make institutional trades that are affirmed by custodians. This estimate equals 7,898.1 advisers, rounded to 7,898 advisers (70% of 11,283 RIAs with institutional clients = approximately 7,898 advisers).

9. We estimate that the proposed amendments to rule 204-2 would result in an initial increase in the collection of information burden estimate by 2 hours for these advisers, to direct their institutional clients' custodians to electronically copy the adviser on any affirmations sent through email or for the adviser to use its systems to issue affirmations.

10. 146.74 hours + 75.37 hours + 5,267.97 hours = 5,490.08 hours.

11. 5,490.08 aggregate hours per year / 13,804 total RIAs that are subject to rule 204-2 = a blended average of 0.4 hours per adviser per year.

12. The currently approved collection of information burden is 2,764,563 aggregate hours for 13,724 advisers, or 201.44 hours per adviser. The proposed new collection of information burden would add approximately 0.4 blended hours per adviser per year, for a total estimate of 201.84 blended hours per adviser per year, or 2,786,199 aggregate

hours under amended rule 204-2 for all registered advisers subject to the rule (201.84 blended hours per adviser x 13,804 RIAs subject to rule 204-2 = 2,786,199 aggregate burden hours for RIAs).

13. (201.84 estimated revised burden hours per adviser x $69.36 per hour) x 13,804 RIAs = $193,250,787.60 revised aggregate annual cost of the hour burden for rule 204-2.

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 staff's experience.

As summarized in Table 1 above, we estimate that the annual external cost associated with the proposed amendment 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 the proposed amendment to rule 204-2, along with an increase in the number of registrants subject to the entire rule 204-2, will result in a revised annual aggregate burden of 2,786,199 hours per year, with a monetized value of $193,250,787.60. This would be an aggregate increase of 21,636 hours, and $17,270,361.60 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.