

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 211(h)(1)-2 under the Investment Advisers Act of 1940

A. JUSTIFICATION

1. Necessity for the Information Collection

On February 9, 2022, the Commission proposed rules related to private fund transparency and conflicts of interest as well as amendments to certain rules that govern investment adviser and fund disclosures under the Investment Advisers Act of 1940 (the “Advisers Act”).¹ The proposed rules and amendments are designed to protect those who directly or indirectly invest in private funds by increasing visibility into certain practices, establishing requirements to address certain practices that have the potential to lead to investor harm, and prohibiting adviser activity that is contrary to the public interest and the protection of investors.

The Commission proposed new rule 211(h)(1)-2² to require an investment adviser registered or required to be registered with the Commission to prepare a quarterly statement that includes certain standardized disclosures regarding the cost of investing in the private fund and the private fund’s performance for any private fund that it advises, directly or indirectly, that has at least two full calendar quarters of operating results, and distribute the quarterly statement to the private fund’s investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person. The quarterly statement would provide investors with fee and expense disclosure for the prior quarterly period or, in the case of a newly formed private fund initial account statement, its first two full calendar quarters of operating results. It would also provide investors with certain performance information depending on whether the fund is categorized as a liquid fund or an illiquid fund.

The collection of information is necessary to provide private fund investors with information about their private fund investments.

2. Purpose and Use of the Information Collection

The purpose of rule 211(h)(1)-2 is to provide private fund investors with fee and expense disclosure for the prior quarterly period or, in the case of a newly formed private fund initial account statement, its first two full calendar quarters of operating results. It would also provide investors with certain performance information depending on whether the fund is categorized as a liquid fund or an illiquid fund. The quarterly statement would allow a private fund investor to compare standardized cost and performance information across its private fund investments. This information would help inform investment decisions, including whether to remain invested in certain private funds or to invest in other private funds managed by the adviser or its related

¹ 15 U.S.C. 80b-1 *et seq.*; Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews Release Nos. IA-5955 (Feb. 9, 2022) available at <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf> (“Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews”).

² 17 CFR 275.211(h)(1)-2.

persons. More broadly, this disclosure would help inform investors about the cost and performance dynamics of this marketplace and potentially improve efficiency for future investments.

3. Consideration Given to Information Technology

Rule 211(h)(1)-2 would 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 to (i) retain a copy of any quarterly statement distributed to fund investors as well as a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s); (ii) retain all records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any statement delivered pursuant to the quarterly statement rule; and (iii) make and keep books and records substantiating the adviser's determination that the private fund it manages is a liquid fund or an illiquid fund pursuant to the quarterly statement rule.³

4. Duplication

The collection of information requirements are not duplicated elsewhere.

5. Effect on Small Entities

Rule 211(h)(1)-2 would not affect most investment advisers that are small entities ("small advisers") because this rule would apply only to advisers that are registered with the Commission, and small advisers are generally not registered or are registered with one or more state securities authorities and not with the Commission. There are approximately 29 small advisers to private funds currently registered with the Commission, and we estimate that 100 percent of these advisers would be subject to rule 211(h)(1)-2. As discussed below, we expect that rule 211(h)(1)-2 would create a new annual burden of approximately 130.5 hours per adviser, which totals 3,784.5 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be \$1,802,466.⁴ 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

The collection of information required by the rule is necessary to protect investors by providing investors and potential investors with information about the adviser, its business, and its conflicts of interest. The consequences of not collecting this information would be that

³ See rule 204-2(a)(20)(i) and (ii) and (a)(22).

⁴ This includes the internal time cost and the annual external cost burden and assumes that, for purposes of the annual external cost burden, 50% of small advisers will use outside legal services, as set forth in the table below.

investors and prospective investors may not have the information they need in order to evaluate the adviser's business practices, performance, whether or not to select or retain that adviser and, if selected or retained, how to manage that relationship.

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 211(h)(1)-2. Before adopting rule 211(h)(1)-2, 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

The information collected pursuant to rule 211(h)(1)-2 would be by delivery of quarterly statements to investors. These disclosures would not be kept confidential, but there is no requirement that this information be filed with the Commission or publicly disclosed.

11. Sensitive Questions

Not applicable.

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 1995⁵ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Based on Investment Adviser Registration Depository (IARD) data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private funds.⁶ We estimate that these advisers would, on average, each provide advice to 9 private funds.⁷ We further estimate that these

⁵ 44 U.S.C. 3501 *et seq.*

⁶ *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

⁷ *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

private funds would, on average, each have a total of 67 investors.⁸ As a result, an average private fund adviser would have, on average, a total of 603 investors across all private funds it advises. As noted above, because the information collected pursuant to rule 211(h)(1)-2 would require disclosures to private fund investors, these disclosures would not be kept confidential.

We have made certain estimates of this data solely for the purpose of this analysis. The table below summarizes the initial and ongoing annual burden estimates associated with rule 211(h)(1)-2.

Table 1: Rule 211(h)(1)-2 Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate ¹	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Preparation of account statements	9 hours	11 hours ²	\$382 (blended rate for compliance attorney (\$373), assistant general counsel (\$476), and financial reporting manager (\$297))	\$4,202	\$4,030 ³
Distribution of account statements to existing investors	1.5 hours	3.5 hours ⁴	\$64 (rate for general clerk)	\$224	\$930 ⁵
Total new annual burden per private fund		14.5 hours		\$4,426	\$4,960
Avg. number of private funds per adviser		9 private funds		9 private funds	9 private funds
Number of PF advisers		5,037 advisers		5,037 advisers	2,518 ⁶

⁸ See Form ADV, Part 1A, Schedule D, Section 7.B.(1).A., #13.

Total new annual burden		657,328.5 hours		\$200,643,858	\$112,403,250
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Notes:

1. The Commission’s estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association’s Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
2. This includes the internal initial burden estimate annualized over a three-year period, plus 8 hours of ongoing annual burden hours and takes into account that there would be four statements prepared each year. The estimate of 11 hours is based on the following calculation: ((9 initial hours / 3 years) + 8 hours of additional ongoing burden hours) = 11 hours.
3. This estimated burden is based on the sum of the estimated wage rate of \$496/hour, for 5 hours, (\$2,480) for outside legal services and the estimated wage rate of \$310/hour, for 5 hours, (\$1,550) for outside accountant assistance, and it assumes that there would be four statements prepared each year. The Commission’s estimates of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
4. This includes the internal initial burden estimate annualized over a three-year period, plus 3 hours of ongoing annual burden hours that takes into account that there would be four statements prepared each year. The estimate of 3.5 hours is based on the following calculation: ((1.5 initial hours / 3 years) + 3 hours of additional ongoing burden hours) = 3.5 hours.
5. This estimated burden is based on the estimated wage rate of \$310/hour, for 3 hours, for outside accounting services, and it assumes that there would be four statements distributed each year.
6. We estimate that 50% of advisers will use outside legal and accounting services for these collections of information. This estimate takes into account that advisers may elect to use outside these services (along with in-house counsel), based on factors such as adviser budget and the adviser’s standard practices for using such outside services, as well as personnel availability and expertise.

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of rule 211(h)(1)-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, Commission staff estimates that the annual cost of outside services associated with rule 211(h)(1)-2 would be approximately \$44,640 per adviser and the total annual external cost burden for rule 211(h)(1)-2 would be \$112,403,250.

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

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.