SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 211(h)(2)-3 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 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)(2)-3[2] to prohibit all private fund advisers from providing preferential terms to certain investors regarding redemption or information about portfolio holdings or exposures. The rule would also prohibit these advisers from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors in a private fund regarding all preferential treatment the adviser or its related persons are providing to other investors in the same fund. For prospective investors, the new rule would require advisers to provide the written notice prior to the investor's investment in the fund. For current investors, the new rule would require advisers to distribute an annual update regarding any preferential treatment provided since the last notice, if any.

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 new rule 211(h)(2)-3 is to protect investors and serve the public interest by requiring disclosure of preferential treatment afforded to certain investors. The new rule would increase transparency in order to better inform investors regarding the breadth of preferential terms, the potential for those terms to affect their investment in the private fund, and the potential costs (including compliance costs) associated with these preferential terms. Also, this disclosure would help investors shape the terms of their relationship with the adviser of the private fund.

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[1] 15 U.S.C. 80b-1 *et seq*.; Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews Release No. 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)(2)-3.

3. Consideration Given to Information Technology

Rule 211(h)(2)-3 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) to retain copies of all written notices sent to current and prospective investors in a private fund pursuant to rule 211(h)(2)-3; and (ii) retain copies of a record of each addressee and the corresponding dates sent, addresses, and delivery method for each addressee.[3]

4. Duplication

The collection of information requirements are not duplicated elsewhere.

5. Effect on Small Entities

Rule 211(h)(2)-3 would have an impact on all investment advisers to private funds, regardless of whether they are registered with the Commission, one or more state securities authorities, or are unregistered. It is difficult to estimate the number of advisers not registered with the Commission that have private fund clients. However, we are able to provide the following estimates based on IARD data: as of November 30, 2021, there are 5,022 exempt reporting advisers ("ERAs"), all of whom advise private funds, by definition. All ERAs would, therefore, be subject to the rules that would apply to all private fund advisers. We estimate that there are no ERAs that would meet the definition of "small entity." We do not have a method for estimating the number of state-registered advisers to private funds that would meet the definition of "small entity."

Rule 211(h)(2)-3 would also apply to other advisers that are not registered with the SEC or with the states and that do not make filings with either the SEC or states. This includes foreign private advisers, advisers that are entirely unregistered, and advisers that rely on the intrastate exemption from SEC registration and/or the de minimis exemption from SEC registration. We are unable to estimate the number of advisers in each of these categories because these advisers do not file reports or other information with the SEC and we are unable to find reliable, public information. As a result, our estimates are based on information from SEC-registered advisers to private funds, ERAs (at the state and Federal levels), and state-registered advisers to private funds.

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)(2)-3. As discussed above, we estimate that there are no ERAs that would meet the definition of "small entity" and we do not have a method for estimating the number of state-registered advisers to private funds that would meet the definition of "small entity." As discussed below, rule 211(h)(2)-3 under the Advisers Act would create a new annual burden of approximately 31.01 hours per adviser, or 899.29 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $374,569.51.

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[3] *See* proposed rule 204-2(a)(7)(v).

6. Consequences of Not Conducting Collection

The collection of information is necessary to provide private fund investors with information about their private fund investments. The consequences of not collecting this information would be that investors and prospective investors may not have the information they need in order to evaluate the adviser's business practices, whether or not to select the adviser and, if selected, 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)(2)-3. Before adopting rule 211(h)(2)-3, the Commission will receive and evaluate public comments on the 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)(2)-3 would be by delivery of written disclosures to all prospective and current investors of all preferential treatment that an adviser or its related persons are providing to other investors in the same fund. 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 1995[4] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Based on IARD data, as of November 30, 2021, there were 12,500 investment advisers that provide advice to private funds. We estimate that these advisers would, on average, each provide advice to 7 private funds. We further estimate that these private funds would, on average, each have a total of 63 investors. As a result, an average private fund adviser would

[4] 44 U.S.C. 3501 *et seq*.

have a total of 441 investors across all private funds it advises. As noted above, because the information collected pursuant to rule 211(h)(2)-3 requires disclosures to private fund investors and prospective 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 the rule.

Rule 211(h)(2)-3 Estimates

	Internal initial burden hours	Internal annual burden hours	Wage rate[1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Preparation of written notice	4 hours	3.3 hours[2]	$424.50 (blended rate for compliance attorney ($373) and assistant general counsel ($476))	$1,400.85	$496[3]
Provision/distribution of written notice	0.25 hours	1.13 hours[4]	$64 (rate for general clerk)	$72.32	
Total new annual burden per private fund		4.43 hours		$1,473.17	$496
Avg. number of private funds per adviser		7 private funds		7 private funds	7 private funds
Number of advisers		12,500 advisers		12,500 advisers	9,375 advisers[5]
Total new annual burden		387,625 hours		$128,902,375	$32,550,000

Notes:

1. *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 2 hours of ongoing annual burden hours and assumes notices would be issued once annually to existing investors and once quarterly for prospective investors. The estimate of 3.3 hours is based on the following calculation: ((4 initial hours /3 years) + 2 hours of additional ongoing burden hours) = 3.3 hours. The burden hours associated with reviewing preferential treatment provided to other investors in the same fund and updating the written notice takes into account that (i) most closed-end funds would only raise new capital for a finite period of time and thus the burden hours would likely decrease after the fundraising period terminates for such funds since they would not continue to seek new investors and would not continue to agree to new preferential treatment for new investors and (ii) most open-end private funds continuously raise capital and thus the burden hours would likely remain the same year over year since they would continue to seek new investors and would continue to agree to preferential treatment for new investors.

3. This estimated burden is based on the estimated wage rate of $496/hour, for 1 hours, for outside legal services at the same frequency as the internal burden hours estimate. 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 1.05 hours of ongoing annual burden hours. The estimate of 1.13 hours is based on the following calculation: ((0.25 initial hours /3 years) + 1.05 hours of additional ongoing burden hours) = 1.13 hours.

5. We estimate that 75% of advisers will use outside legal services for these collections of information. This estimate takes into account that advisers may elect to use outside legal services (along with in-house counsel), based on factors such as adviser budget and the adviser's standard practices for using outside legal 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)(2)-3, 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 above, Commission staff estimates that the annual cost of outside services associated with rule 211(h)(2)-3 would be approximately $3,472 per adviser and the total annual external cost burden for rule 211(h)(2)-3 would be $32,550,000.

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.