

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 206(4)-6

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act” or “Act”) (15 USC 80b-6(4)) prohibits any investment adviser from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative and gives the Securities and Exchange Commission (“Commission”) the power, by rules and regulations, to define and prescribe means reasonably designed to prevent such acts, practices and courses of business. The Commission adopted rule 206(4)-6 under the Advisers Act to address an investment adviser’s fiduciary obligation to clients who have given the adviser authority to vote their proxies. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes client securities in the best interest of clients, including procedures to address any material conflict that may arise between the interests of the adviser and the client; (ii) disclose to clients how they may obtain information from the adviser on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser’s proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client.

Rule 206(4)-6 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.¹ The title of this collection is “Rule 206(4)-6” and the Commission previously submitted this collection to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved, and subsequently extended, this collection under control number 3235-0571 (expiring on July 31, 2020). 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 control number. This collection of information is codified at 17 CFR 275.206(4)-6 and is mandatory. The respondents are investment advisers registered with the Commission that vote proxies with respect to clients’ securities. This collection of information is necessary to permit advisory clients of these investment advisers to use the information collected to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of their proxy voting activities. Responses to the disclosure requirement are not kept confidential.

2. Purpose and Use of the Information Collection

The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients’ best interest and provide clients with information about how their proxies were voted. As discussed in Item 1 (above), advisory clients use the information required by rule 206(4)-6 to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of their proxy voting activities. The information required by Advisers Act rule 204-2, a recordkeeping rule, also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not

¹ 44 U.S.C. 3501 to 3520.

have information they need to assess their advisers' services and monitor their advisers' handling of their accounts, and the Commission would be less efficient and effective in its programs.

3. Consideration Given to Information Technology

The collection of information requirements under rule 206(4)-6 take the form of (1) writing policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients, (2) disclosing how clients may obtain information on how the adviser has voted their proxies, and (3) describing to clients information about the adviser's proxy voting procedures and policies. Accordingly, the Commission's use of computer technology may have little effect. The Commission, however, does currently permit advisers to maintain the records related to their proxy voting policies and to how they have voted client proxies through the use of electronic media.²

4. Duplication

The requirements of rule 206(4)-6 are not duplicated elsewhere for those investment advisers that must comply with the rule, although those advisers effectively are required to use disclosures mandated by Form ADV and related rules to meet their disclosure obligations under rule 206(4)-6. Rule 204-3 under the Advisers Act generally requires investment advisers to furnish certain information to clients and prospective clients by providing them a brochure that contains all information required by Part 2 of Form ADV.

As required by Part 2 of Form ADV, this brochure must include, among other things, the same proxy-related disclosure mandated by rule 206(4)-6. That is, an investment adviser that has, or will accept, the authority to vote its clients' securities must (i) describe in its brochure its

² These records are separately required under the Advisers Act recordkeeping rule 204-2.

voting policies and procedures, including those adopted pursuant to rule 206(4)-6; (ii) describe in its brochure whether (and, if so, how) its clients can direct a vote in a particular solicitation; (iii) describe in its brochure how it addresses conflicts of interest between it and its clients with respect to voting their securities; (iv) describe in its brochure how clients may obtain information from the investment adviser about how it voted their securities; and (v) explain in the brochure that clients may obtain a copy of its proxy voting policies and procedures upon request. These brochure disclosure requirements are not duplicative of those contained in rule 206(4)-6 because an adviser need not make separate disclosures to satisfy each requirement.

5. Effect on Small Entities

All advisers, regardless of their size, are equally subject to the collection requirements. The requirements of rule 206(4)-6 apply equally to all investment advisers that are registered with the Commission and vote proxies on behalf of their clients, including those advisers that are small entities. It would be incompatible with the objectives of the rule to exempt small entities from these requirements, which are designed to ensure clients are afforded the full protections attendant to an adviser's fiduciary duties as recognized by the Advisers Act when an adviser is voting their proxies. Nevertheless, in designing the rule, the Commission took an approach that permits small firms to implement the rule in whatever manner is least burdensome in light of their particular circumstances. The Commission drafted rule 206(4)-6 to permit each firm subject to the rule to design and structure its own policies and procedures in light of the firm's operational structure and the particular types of conflicts encountered by the firm in connection with its unique business and clients.

6. Consequences of Not Conducting Collection

Less frequent information collection would be incompatible with the objectives of rule 206(4)-6. For example, if the information required by the rule were to be either not collected or collected less frequently, both the Commission's ability to protect investors and the ability of advisory clients to assess and monitor advisers' proxy voting practices would be reduced.

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

The collection of information imposes no additional requirements regarding record retention.³

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 206(4)-6 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received one comment in response to its request. The comment did not specifically address rule 206(4)-6 or its requirements; the comment proposed that the Commission adopt a broad policy on shareholder rights and transparency in the proxy process. The Commission and the staff of the Division of Investment Management also participate in an ongoing dialogue with representatives of the investment

³ As discussed in Items 3 and 4 (above), records related to an adviser's proxy voting policies and procedures and proxy voting history are separately required under the Advisers Act recordkeeping rule 204-2. 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. Rule 204-2(e). 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 retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Investment Advisers Act.

adviser industry through public conferences, meetings and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift

Not applicable.

10. Confidentiality

Rule 206(4)-6 requires investment advisers to make certain disclosures to their clients.

These responses are not kept confidential.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be 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

Rule 206(4)-6 requires an investment adviser that votes client securities to adopt written policies and procedures reasonably designed to ensure that the adviser votes client securities in the best interest of clients, and requires the adviser to disclose to clients information about those policies and procedures. For purposes of estimating the paperwork burden for investment advisers under rule 206(4)-6, we estimate that the number of investment advisers subject to collection of information requirements under the rule is 14,003.⁴ We further estimate that each

⁴ Based on records of information submitted to the Commission by investment advisers in Part 1 of

of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 140,030 hours.⁵

The rule also requires these advisers to describe their proxy voting policies and procedures to clients and make certain related disclosures, as discussed in Item 1, above. The attendant paperwork burden is already incorporated in collections titled “Form ADV” (OMB control number 3235-0049) and “Rule 204-3” (OMB control number 3235-0047). As discussed above, investment advisers are required to make disclosures concerning their proxy voting policies and procedures in brochures that contain all information required by Part 2 of Form ADV, including the information described in rule 206(4)-6.

In addition, rule 206(4)-6 requires these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. Based on information submitted to the Commission by SEC-registered investment advisers, we estimate that SEC-registered advisers have, on average, 3,500 clients each. However, we estimate that, on average, at least 90 percent of each adviser’s clients would find the adviser’s description of its policies sufficiently informative, and at most ten percent, or 350 clients of each adviser on average, would request copies of the underlying policies and procedures.⁶ We estimate that it would take these advisers

Form ADV, 14,003 of the 15,160 total investment advisers registered with the Commission report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis. Because Part 1 of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients, for purposes of this estimate, we infer that these advisers vote proxies on behalf of one or more clients in connection with providing discretionary asset management services.

⁵ 14,003 x 10 = 140,030.

⁶ 3,500 x 10% = 350.

0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 490,105 hours.⁷

Accordingly, we estimate that rule 206(4)-6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 630,135 hours.⁸

We believe that investment advisers use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be \$339, including benefits. Additionally, we believe that investment advisers use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be \$68, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be \$80,797,310.⁹ Information related to the estimated total burden is also summarized in the table below.

⁷ $0.1 \times 350 \times 14,003 = 490,105$.

⁸ $140,030 + 490,105 = 630,135$.

⁹ Data from the Securities Industry and Financial Markets Association's report entitled *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a Compliance Manager is approximately \$339 per hour. Data from the Securities Industry and Financial Markets Association's report entitled *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for a General Clerk is approximately \$68 per hour. $(140,030 \text{ hours} \times \$339 \text{ per hour}) + (490,105 \text{ hours} \times \$68 \text{ per hour}) = \$80,797,310$.

RULE 206(4)-6 PRA ESTIMATES

CURRENT BURDEN ESTIMATES

	Hour Burden	Wage rate	Internal time costs
Documenting proxy voting policies and procedures	122,650 hours (10 hours x 12,265 advisers)	\$309 (rate for compliance manager)	\$37,898,850
Delivery of proxy voting policies and procedures to clients	342,194 (0.1 hours per client x 279 clients x 12,265 advisers)	× \$62 (rate for general clerk)	\$21,215,997
Total Current burden estimates	464,844 hours		\$59,114,878

REVISED BURDEN ESTIMATES

	Hour burden	Wage rate	Internal time costs
Documenting proxy voting policies and procedures	140,030 hours (10 hours x 14,003 advisers)	\$339 (rate for senior operations manager)	\$47,470,170
Delivery of proxy voting policies and procedures to clients	490,105 hours (0.1 hours x 350 x 14,003)	\$68 (rate for senior operations manager)	\$33,327,140
Total Revised Burden Estimates	630,135 hours		\$80,797,310

Summary of Revised Annual Responses, Burden Hours, and Cost Estimates

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			External Cost to Respondents (\$)		
	Previously approved	Requested	Change	Previously approved	Requested	Change	Previously approved	Requested	Change
Rule 206(4)-6	3,421,935	4,901,050 ¹⁰	+1,488,565	464,844	630,135	+165,291	0	0	0

¹⁰ 14,003 x 350 = 4,901,050.

13. Cost to Respondents

We do not anticipate that rule 206(4)-6 will impose any non-labor costs.

14. Cost to the Federal Government

There are no additional costs to the federal government.

15. Change in Burden

We have increased the estimated hour burden from 464,844 hours to 630,135 hours based on new information with respect to the number of registered investment advisers that provide discretionary asset management services and to the estimated average number of clients per SEC-registered investment adviser. This new information is based on data derived from information submitted by advisers on Form ADVs filed through the IARD. The number of hours per response has not changed since the last estimate. The increase in hour burden is entirely due to an increase in the number of respondents.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exception to Certification Statement for Paperwork Reduction Act

Submission

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

