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 majority of records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years, and in some cases longer.[3] These requirements constitute a mandatory "collection of information," within the meaning of the Paperwork Reduction Act.

On July 26, 2023, the Commission proposed a new rule 275.211(h)(2)-4 under the Advisers Act to address how investment advisers eliminate, or neutralize the effects of, conflicts of interest associated with the use of certain technologies in investor interactions.[4] The proposal includes corresponding amendments to Rule 204-2 requiring advisers to make and keep certain records for client accounts.[5] Specifically, the proposed amendments would require advisers to

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1 15 U.S.C. 80b-4.

2 17 CFR 275.204-2.

3 17 CFR 275.204-2(e). The retention period required for the majority of books and records requirements 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 Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, Release No. IA- 6353 (July 26, 2023) [88 FR 53960 (Aug. 9, 2023)], *available at https://www.sec.gov/files/rules/proposed/2023/34-97990.pdf.*

5 *See* proposed rule 204-2(a)(24).

make and retain all records required to be made and maintained pursuant to proposed rule 275.211(h)(2)-4, including: (i) written documentation of the evaluation conducted pursuant to proposed rule 275.211(h)(2)-4(b)(1),[6] (ii) written documentation of each determination made pursuant to proposed rule 275.211(h)(2)-4(b)(2), including the rationale for such determination; (iii) written documentation of each elimination or neutralization made pursuant to proposed rule 275.211(h)(2)-4(b)(3); (iv) written policies and procedures prepared in accordance with proposed rule 275.211(h)(2)-4(c), including any written description and the date on which the policies and procedures were last reviewed; (v) a record of any disclosures provided to each investor regarding the investment adviser's use of covered technologies, including, if applicable, the date such disclosure was provided or updated; (vi) a record of each instance in which a covered technology was altered, overridden, or disabled, the reason for such action, and the date thereof, including a record of all instances where an investor requested that a covered technology be altered or restricted in any manner. Advisers would be required to maintain the proposed records for a period of not less than five years as required under the current books and recordkeeping rule.[7] These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities, including assessing compliance with the requirements of the proposed rule.

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[6] This proposed requirement would include: (A) a list or other record of all covered technologies used in investor interactions by the investment adviser, including: (1) the date on which each covered technology is first implemented, and each date on which any covered technology is materially modified; and (2) the investment adviser's evaluation of the intended as compared to the actual use and outcome of each covered technology in investor interactions; (B) documentation describing any testing of the covered technology in accordance with proposed rule 275.211(h)(2)-4(b)(1), including: (1) the date on which testing was completed; (2) the methods used to conduct the testing; (3) any actual or reasonably foreseeable potential conflicts of interest identified as a result of the testing; (4) a description of any changes or modifications to the covered technology made as a result of the testing and the reason for those changes; and (5) any restrictions placed on the investment adviser's use of the covered technology as a result of the testing.

[7] *See* rule 204-2(e)(1).

The collection has been previously approved under Office of Management and Budget ("OMB") control number 3235-0278 (expiring May 31, 2026), 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 facilitate the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the proposed new rule 275.211(h)(2)-4 to address how investment advisers eliminate, or neutralize the effects of, conflicts of interest associated with the use of covered technologies in investor interactions.

The respondents to the rule are investment advisers registered with the Commission. The likely respondents for the amendments to the rule will be all 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.[8] 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.[9]

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

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

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 amendments to rule 204-2 will not distinguish between small entities and other investment advisers because the protections of the Advisers Act are intended to 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 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 amendments to rule 204-2, including the collection of information requirements resulting from the proposed amendments. 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

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.

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 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[10] 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 that use covered technology in investor interactions. All such advisers will be subject to the proposed amendments to rule 204-2. As of February 2023, there were 15,402 advisers registered with the Commission. We estimate that substantially all of these advisers would be subject to the proposed amendments to rule 204-2. In our most recent Paperwork Reduction Act submission for rule 204-2, we estimated for rule 204-2 a total annual aggregate hour burden of 2,803,536 hours, based on an estimate of 15,160 registered advisers, with a total annual aggregate external cost burden of $0.[11] The table below summarizes the initial and ongoing annual burden estimates associated with the proposed

[10] 44 U.S.C. 3501 *et seq*.

[11] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204-2, OMB Report, OMB 3235-0278 (May 2023).

amendments to rule 204-2. We have made certain estimates of the burdens associated with the proposed amendments solely for the purpose of this PRA analysis. The application of the provisions of the proposed rule—and thus the extent to which there are collections of information and their related burdens—would be contingent on a number of factors, such as, among others, the types of covered technologies an adviser uses, an adviser's business model, the number of clients of the adviser, the extent, nature and frequency of investor interactions, and the nature and extent of an adviser's conflicts. Because of the wide diversity of services and relationships offered by investment advisers, we expect that the obligations imposed by the proposed rule would, accordingly, vary substantially among advisers. However, we have made certain estimates of this data solely for the purpose of this PRA analysis.

Table 1: Rule 204-2 PRA Estimates

	Internal initial burden hours[1]	Internal annual burden hours[2]	Wage rate[1]	Internal time cost[2]	Annual external cost burden[3]
PROPOSED ESTIMATES					
Recordkeeping requirements[7]	N/A	18.5 hours	$412 (blended rate for compliance attorney, senior programmer, and senior corporate manager)	$7,622 (equal to the internal annual burden hours x the wage rate)	$0
Number of investment advisers		x 15,402 investment advisers[7]		x 15,402 investment advisers	$0
Total estimated annual aggregate burden related to proposed amendments to rule 204-2		284,937 hours		$117,394,044	$0

Notes:

1. 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 2023 ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
2. All costs calculated are rounded to the nearest dollar.
3. Advisers may incur third-party costs in connection with the proposed conflicts rules but, due to data limitations, for the purpose of this Paperwork Reduction Act analysis, we estimate the full cost of compliance to be internal.

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 the Commission's experience.

As summarized in Table 1 above, we estimate that the annual external cost associated with the proposed amendments to rule 204-2 is $0.

14. Cost to Federal Government

There are no additional costs to the federal government directly attributable to rule 204-2.

15. Change in Burden

As noted above, the approved annual aggregate burden for rule 204-2 is currently 2,803,536 hours, based on an estimate of 15,160 registered advisers, or 184.93 hours per registered adviser, with a total monetized costs of $179,000,834. We estimate that the proposed amendments to rule 204-2 will result in a revised annual aggregate burden of 3,088,473 hours per year, based on a revised estimate of 15,402 registered advisers, or 200.52 hours per registered adviser, with a monetized internal value of $117,394,044. This would be an aggregate increase of 284,937 hours, or $396,334,113 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.