OMB CONTROL NUMBER: 3235-xxxx

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 211(h)(2)-4 under the Investment Advisers Act of 1940

A. JUSTIFICATION

1. Necessity for the Information Collection

On July 26, 2023, the Securities and Exchange Commission (the "Commission" or "SEC") proposed new rule 275.211(h)(2)-4 ("rule 211(h)(2)-4") under Section 211 of the Investment Advisers Act of 1940 (the "Advisers Act") that would require investment advisers registered, or required to register with the Commission, to identify and eliminate, or neutralize the effects of, conflicts of interest associated with the use of covered technologies in investor interactions because the effects of these conflicts of interest are contrary to the public interest and the protection of investors.[1] Proposed rule 211(h)(2)-4 would contain certain requirements as described below.

Elimination, or neutralization of effect of, conflicts of interest. Proposed rule 211(h)(2)-4(b) would require an adviser to (i) evaluate any use or reasonably foreseeable potential use by the adviser or its associated person of a covered technology in any investor interaction to identify any conflict of interest[2] associated with that use or potential use; (ii) determine whether any such conflict of interest places or results in placing the adviser's or its associated person's interest ahead of the interest of investors; and (iii) eliminate, or neutralize the effect of, those conflicts of

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[1] 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.*

[2] As used in the proposed rule, the term "associated person" means a natural person who is a "person associated with an investment adviser" as defined in section 202(a)(17) of the Advisers Act. Covered technology, conflict of interest, investor interaction are each defined terms under the proposed rules. See proposed rule 211(h)(2)-4(a).

interest that place the adviser's or its associated person's interest ahead of the interest of investors.[3]

Policies and procedures. Proposed rule 211(h)(2)-4(c) would require a firm that has any investor interaction using covered technology to adopt and implement written policies and procedures reasonably designed to achieve compliance with the proposed conflicts rule, including: (i) a written description of the process for evaluating any use (or reasonably foreseeable potential use) of a covered technology in any investor interaction; (ii) a written description of any material features of any covered technology used in any investor interaction and of any conflicts of interest associated with that use; (iii) a written description of the process for determining whether any conflict of interest identified pursuant to the proposed rule results in an investor interaction that places the interest of the adviser or person associated with the adviser ahead of the interests of the investor; (iv) a written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to proposed rule 211(h)(2)-4 to result in an investor interaction that places the interest of the adviser or its associated person ahead of the interests of the investor; and (v) a review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established pursuant to the proposed rule and the effectiveness of their implementation as well as a review of the written descriptions established pursuant to the proposed rule.[4]

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[3] *See* proposed rule 211(h)(2)-4(b).

[4] *See* proposed rule 211(h)(2)-4(c).

The requirements under proposed rule 211(h)(2)-4(c) would result in a new "collection of information" within the meaning of the Paperwork Reduction Act of 1995.[5] The title of the new collection of information we proposed is "Rule 211(h)(2)-4 under the Investment Advisers Act." OMB has not yet assigned a control number for "Rule 211(h)(2)-4 under the Investment Advisers Act." 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

These proposed collections are designed to require firms to have an established framework for eliminating or neutralizing conflicts of interest that could harm clients and which would assist advisers in complying with the requirements under proposed 211(h)(2)-4(b). Additionally, the Commission's staff could use the information obtained through these collections in its enforcement, regulatory, and examination programs. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered under the Advisers Act that used covered technologies in investor interactions, which would likely include all investment advisers registered with the Commission.

The information collected takes the form of records retained by respondents. Responses provided to the Commission in the context of its examination and oversight program are

[5] 44 U.S.C. 3501 to 3520. The requirements under proposed rule 211(h)(2)-4(b) do not constitute an independent information collection and, to the extent they would, the process advisers would engage in to comply with the policies and procedures requirements under proposed 211(h)(2)-4(c), and the information collection burden related thereto, are inextricable from any information collection burden under proposed 211(h)(2)-4(b). Therefore, the information collection burden resulting from the policies and procedures required under the proposed rule would constitute the full burden of the rules.

generally kept confidential subject to the applicable law.[6] This collection of information is found at 17 CFR 275.211(h)(2)-4 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.[7]

4. Duplication

The collection of information requirements of the proposed rule 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 proposed rule are the same for all investment advisers registered with the Commission, including those that are small entities. The requirements of the proposed rule 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. 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.

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

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

6. Consequences of Not Conducting Collection

Less frequent information collection will be incompatible with the objectives of the proposed 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)

Not applicable.

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 proposed rule 211(h)(2)-4, including the collection of information requirements resulting from the proposed rule. Before adopting the rule, 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 proposed rule 211(h)(2)-4 in the context of the Commission's examination and oversight program are generally kept confidential subject to the applicable law.

11. Sensitive Questions

Whether information of a sensitive nature, including social security numbers, will be required under this collection of information depends on a particular adviser's investor

interactions using covered technology. The information collection is likely to collect 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[8] 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 rule. 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 rule. The table below summarizes the initial and ongoing annual burden estimates associated with the proposed rule per adviser. 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

[8] 44 U.S.C. 3501 *et seq*.

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.

Table 1: Rule 211(h)(2)-4 PRA Estimates

	Internal initial burden hours[1]	Internal annual burden hours[2]	Wage rate[3]	Internal time cost[4]	Annual external cost burden[5]
PROPOSED ESTIMATES					
Adopting and implementing policies and procedures	21 hours	30 hours	$487 (blended rate for senior corporate and information technology managers, assistant general counsel, and compliance attorney)	$14,610 (equal to the internal annual burden x the wage rate)	$0
Preparation of written descriptions[6]	60 hours	42.5 hours	$446 (blended rate for senior corporate and information technology managers and staff, assistant general counsel, and compliance attorney)	$18,955 (equal to the internal annual burden x the wage rate)	$0
Annual review of policies and procedures and written descriptions		5 hours	$446 (blended rate for senior corporate and information technology managers and staff, assistant general counsel, and compliance attorney)	$2,230 (equal to the internal annual burden hours x the wage rate)	$0
Total new annual burden		77.5 hours (equal to the sum of the above boxes)[7]		$35,795 (equal to the sum of the above boxes)[8]	$0 (equal to the sum of the above four boxes)

Notes:

1. Most advisers using covered technology already have certain policies and procedures in place relevant to these technologies so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm. In reaching our estimates, we considered that advisers relying more heavily on complex covered technologies may exceed this average, while advisers relying less heavily on these technologies may fall below this average.
2. Totals for this category include internal initial hour burden estimates annualized over a three-year period.
3. 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.
4. All costs calculated are rounded to the nearest dollar.
5. Firms 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.
6. Includes all written descriptions to be required under proposed rules 275.211(h)(2)-4(c)(1) through (3).
7. 77.5 hours per adviser x 15,402 advisers = 1,193,655 aggregate burden hours.
8. $35,795 per adviser x 15,402 advisers = $551,314,590 aggregate internal monetized cost.

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of proposed rule 211(h)(2)-4, 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 rule 211(h)(2)-4 is $0.

14. Cost to Federal Government

There are no additional costs to the federal government directly attributable to proposed rule 211(h)(2)-4.

15. Change in Burden

Not applicable. This is the first request for approval of a collection of information for this proposed rule.

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.