For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Vanessa A. Countryman,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Proposed Collection; Comment Request; Extension: Rule 206(4)–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'' or ''SEC'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 206(4)–1 under the Investment Advisers Act of 1940 (''Advisers Act''), known as the ''marketing rule,'' addresses advisers marketing their services to clients and investors.[1] Specifically, the marketing rule states that, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it is unlawful for any investment adviser registered or required to be registered under section 203 of the of the Advisers Act, directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of the rule, which include the rule's general prohibitions, as well as conditions applicable to an adviser's use of testimonials, endorsements, third-party ratings, and performance information.

Each requirement under the marketing rule that an adviser disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the Paperwork Reduction Act of 1995 (''PRA''). The respondents to these collections of information requirements will be investment advisers that are registered or required to be registered with the Commission. As of September 2023, there were 15,555 investment advisers registered with the Commission. Investment adviser marketing is not mandatory. However, marketing is an essential part of retaining and attracting clients and may be conducted easily through the internet and social media. Accordingly, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of ''advertisement'' and therefore be subject to the requirements of the marketing rule.

Because the use of testimonials, endorsements, third-party ratings, and performance results in advertisements is voluntary, the percentage of investment advisers that would include these items in an advertisement is uncertain. However, we have made certain estimates of this data, as discussed below, solely for the purpose of this PRA analysis.

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about an adviser's marketing practices. We use the information to support and manage our regulatory, examination, and enforcement programs. Clients use this information to determine whether to hire an adviser.

This collection of information is found at 17 CFR.206(4)–1 and it is mandatory. The information collected takes the form of records retained by respondents and disclosures to respondents' clients, potential clients, and the Commission.

General Prohibitions

The general prohibitions under the rule do not create a collection of information and are, therefore, not discussed, with one exception. The rule prohibits advertisements that include a material statement of fact that the adviser does not have a reasonable basis for believing that it will be able to substantiate upon demand by the Commission. Advisers would be able to demonstrate this reasonable belief in a number of ways.[2] For example, they could make a record contemporaneous with the advertisement demonstrating the basis for their belief. An adviser might also choose to implement policies and procedures to address how this requirement is met. This will create a collection of information burden within the meaning of the PRA.

As stated above, we estimate that all investment advisers will disseminate at least one communication that meets the rule's definition of ''advertisement'' and therefore be subject to the requirements of the marketing rule. We also estimate that such advertisements will include at least one statement of material fact that will be subject to this general prohibition, for which an adviser will create and/or maintain a record documenting its reasonable belief that it can substantiate the statement. This estimate reflects that many types of statements typically included in an advertisement (*e.g.* performance) can likely be substantiated by other records that an adviser will be required to create and maintain under the rule.[3] Table 1 summarizes the PRA estimates for the internal and external burdens associated with this requirement.

TABLE 1—GENERAL PROHIBITIONS

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
Estimates for Rule 204–1 for General Prohibitions					
Determine whether statements in an advertisement are material facts.	0.5 0.5	× ×	$372 (compliance manager) ..... $440 (compliance attorney)	$186 $220	.....

[37] 17 CFR 200.30–3(a)(12).

[1] *See* 17 CFR 206(4)–1; Investment Adviser Marketing, Release No. IA–5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (the ''Adopting Release''); the Commission adopted amendments to Rule 206(4)–1 in 2020 that amended existing rule 206(4)–1 (the ''advertising rule''), which was adopted in 1961 to target advertising practices that the Commission believed were likely to be misleading, and replaced rule 206(4)–3 (the ''solicitation rule''), which was adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest; *see* Adopting Release; *see also* 17 CFR 275.206(4)–1; Advertisements by Investment Advisers, Release No. IA–121 (Nov. 1, 1961) [26 FR 10548 (Nov. 9, 1961)]; Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Release No. 688 (July 12, 1979) [44 FR 42126 (Jul 18, 1979)].

[2] *See* Adopting Release, *supra* footnote 1, at section II.B.2.

[3] *See id.*

TABLE 1—GENERAL PROHIBITIONS—Continued

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
Creation and maintenance of records substantiating material facts in any advertisements.	4 1	× ×	$75 (general clerk) $84 (compliance clerk)	$300 $84	
Total burden per adviser Total number of affected advisers	6 × 15,555	....	....	$790 × 15,555	....
Total burden for general prohibitions	93,330 hours	.....	.....	$12,288,450	.....

Notes:
[1] See SIFMA Report, *infra* footnote 8.

Testimonials and Endorsements in Advertisements

Under the marketing rule, investment advisers are prohibited from including in any advertisement, or providing any compensation for, any testimonial or endorsement unless the adviser discloses, or the investment adviser reasonably believes that the person giving the testimonial or endorsement discloses: (i) clearly and prominently: (A) that the testimonial was given by a current client or investor, or the endorsement was given by a person other than a current client or investor; (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and (C) a brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person; (ii) the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and (iii) a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.[4] The rule also imposes an oversight obligation that requires that an investment adviser have a reasonable basis to believe that the testimonial or endorsement complies with the marketing rule and have a written agreement with the person giving a testimonial or endorsement (except for certain affiliated persons of the adviser) that describes the scope of the agreed upon activities and the terms of the compensation for those activities when making payments for compensated testimonials and endorsements that are above the *de minimis* threshold.[5] This collection of information consists of two components: (i) the requirement to disclose certain information in connection with the testimonial and endorsement, and (ii) the requirement to oversee the testimonial or endorsement, including a written agreement with certain persons giving the testimonial or endorsement.

The marketing rule's definitions of testimonials and endorsements generally contain three elements: (i) statements about the client's/non-client's or investor's experience with the investment adviser or its supervised persons, (ii) statements that directly or indirectly solicit any prospective client or investor in a private fund for the investment adviser, or (iii) statements that refer any prospective client or investor in a private fund to the investment adviser.

We previously estimated that 50 percent of advisers will use a testimonial or endorsement in their advertisements.[6] However, we are reducing this estimate to 21 percent in light of amendments to Form ADV that became effective in 2021 that require advisers to provide additional information regarding their marketing practices.[7] We continue to estimate that each adviser will use an average of five promoters and use 35 testimonials or endorsements annually, which includes testimonials and endorsements incorporated into an adviser's own advertisement and those communicated by promoters directly.

Under the marketing rule, an adviser that uses a testimonial or endorsement will be required to disclose certain information at the time it is disseminated. We estimate this burden at 0.20 hours per disclosure and believe that advisers will incur this same burden each year, since each testimonial and/or endorsement used will likely be different and thus require updated disclosures. An investment adviser's in-house compliance managers and compliance attorneys will likely prepare disclosures, which will likely be included in the advertisement.[8]

Some of these third-party testimonials and endorsements will require delivery; thus, we estimate that 20 percent of the disclosures would be delivered by the U.S. Postal Service, with the remaining 80 percent delivered electronically or as part of another delivery of documents. For the 20% of advisers that will use physical mail, we estimate that the average annual costs associated with printing and mailing this information will be collectively $592 for all disclosure documents associated with a single registered investment adviser.[9]

We estimate the average burden hours each year per adviser to oversee testimonials and endorsements will be one hour for each promoter, or five hours in total for each adviser that is subject to this collection of

[4] Rule 206(4)–1(b)(1).

[5] Rule 206(4)–1(b)(2).

[6] *See* Adopting Release, *supra* footnote 1, at section IV.B.

[7] *See* Form ADV, Item 5.L (requiring an adviser to state, among other things, whether any of its advertisements include performance results, testimonials, endorsements, or third-party ratings). Specifically, 3,231 advisers indicated that they use either testimonials or endorsements in response to Item 5.L. 3,231 advisers/15,555 total advisers registered as of September 2023 = approximately 21%; *see also* Adopting Release, *supra* footnote 1, at section II.H.

[8] We estimate the hourly wage rate for compliance manager is $372 and a compliance attorney is $440; the hourly wages used are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[9] We do not have specific data regarding how the cost of printing and mailing the underlying information would differ, nor are we able to specifically identify how the cost of printing and mailing the underlying information might be affected by the rule; for these reasons, we estimate $592 per year to collectively print and mail, upon request, the underlying information associated with hypothetical performance for purposes of our analysis; we previously estimated this cost at $500 and are adjusting to account for inflation between December of 2020 and January of 2024; *see* Adopting Release, *supra* footnote 1, at section IV.B; U.S. Bureau of Labor Statistics, CPI Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm;* in addition, investors may also request to receive the underlying information electronically; we estimate that there would be negligible external costs associated with emailing electronic copies of the underlying information.

information.[10] While the rule provides flexibility as to how advisers conduct this oversight, we generally believe that this burden will include contacting solicited clients, pre-reviewing testimonials or endorsements, or other similar methods. Additionally, we estimate that each adviser will incur an average burden hour of one hour for each promoter, or five hours in total, to prepare the required written agreements. In-house compliance managers and compliance attorneys are likely to provide oversight of the third party testimonials and endorsements and prepare the written agreements.

Finally, we are no longer including our prior estimate that each adviser that uses a compensated testimonial or endorsement will incur an initial burden of two hours to modify its policies and procedures to reflect the adviser's oversight of testimonials and endorsements, as this estimate related to initial burdens of the rule only. Table 2 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 2—TESTIMONIALS AND ENDORSEMENTS

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
ESTIMATES FOR TESTIMONIALS AND ENDORSEMENTS					
Revise and update each required disclosure	0.1 hours × 35 disclosures.	×	$372 (compliance manager).	$1,302	
	0.1 hours × 35 disclosures.	×	$440 (compliance attorney).	$1,540	
Oversight of compensated testimonials and endorsements and preparation of written agreements.	1 hours × 5 promoters.	×	$372 (compliance manager).	$1,860	
	1 hours × 5 promoters.	×	$440 (compliance attorney).	$2,200	
Total burden per adviser	17 hours			$6,902	$592
Total number of affected advisers	× 3,231			× 3,231	× 3,231 (× 20% of advisers that will use physical mail).
Total burden for testimonials and endorsements	54,927 hours			$22,300,362	$382,550.

Notes:
1. *See* SIFMA Report, *supra* footnote 8.

Third-Party Ratings in Advertisements

As referenced above, rule 206(4)–1(c) prohibits an investment adviser from including a third-party rating in an advertisement unless certain conditions are met, including that the adviser must clearly and prominently disclose (or reasonably believe that the third-party rating clearly and prominently discloses): (i) the date on which the rating was given and the period of time upon which the rating was based, (ii) the identity of the third-party that created and tabulated the rating, and (iii) if applicable, that cash or non-cash compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

We previously estimated that approximately 50 percent of advisers will use third-party ratings in advertisements, but we are reducing this estimate to 15 percent.[11] We continue to believe that these advisers will typically use one third-party rating on an annual basis. We are no longer including our prior estimate that advisers will incur an initial internal burden of 3.0 hours to draft and finalize the required disclosures for third-party ratings, as this estimate related to initial burdens of the rule only. Because many of these ratings or rankings are done yearly *(e.g.,* 2018 Top Wealth Adviser), we continue to estimate that an adviser that continues to use a third-party rating will incur ongoing, annual costs of 0.75 burden hours to draft the third-party rating disclosure updates.[12] Table 3 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 3—THIRD-PARTY RATINGS

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
ESTIMATES FOR THIRD PARTY RATINGS					
Update required disclosures	0.375 hours	×	$372 (compliance manager)	$139.50	
	0.375 hours	×	$440 (compliance attorney)	$165	
Total burden per adviser	.75 hours			$304.50	
Total number of affected advisers	× 2,373			× 2,373	
Total burden for third-party ratings	1,780 hours			$722,579	

Notes:
1. *See* SIFMA Report, *supra* footnote 8.

[10] This estimate is based on the following calculation: 1 hour per each solicitor relationship × 5 promoter relationships.

[11] *See supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 2,373 advisers indicated that they include third-party ratings in their advertisements in response to Item 5.L of Form ADV. 2,373 advisers/15,555 total advisers registered as of September 2023 = approximately 15%; *see also* Adopting Release, *supra* footnote 1, at section IV.B.

[12] We believe that this burden will also be split evenly between an adviser's compliance attorney and compliance manager.

Performance Advertising

The marketing rule imposes certain conditions on the presentation of performance results in advertisements, as discussed above. Below we discuss the conditions that create ''collection of information'' requirements within the meaning of the PRA. First, the rule prohibits any presentation of gross performance unless the advertisement also presents net performance that meets certain criteria.[13] Second, the rule prohibits any presentation of performance results of any portfolio or any composite aggregation of related portfolios, other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.[14] Third, the rule prohibits an advertisement from including related performance, unless it includes all related portfolios, subject to a conditional exception.[15] Fourth, the rule prohibits an advertisement from including extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.[16] Fifth, the rule also prohibits an advertisement from including predecessor performance, unless certain conditions are satisfied.[17] Finally, the rule requires that an adviser that advertises hypothetical performance: (i) adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provide reasonably sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provide (or, if the intended audience is an investor in a private fund provide, or offers to provide promptly) reasonably sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

We previously estimated that 95 percent, or 13,038 advisers, provide performance information in their advertisements, but we are reducing this estimate to 40 percent.[18] The estimated numbers of burden hours and costs regarding performance results in advertisements may vary depending on, among other things, the complexity of the calculations, the type of performance and the risks that investors may not understand the limitations of the information, and whether preparation of the disclosures is performed by internal staff or outside counsel.

Presentation of Net Performance in Advertisements

We are no longer including our prior estimate that an investment adviser that elects to present gross performance in an advertisement will incur an initial burden of 15 hours in preparing net performance for each portfolio, including the time spent determining and deducting the relevant fees and expenses to apply in calculating the net performance and then actually running the calculations, as this estimate related to initial burdens of the rule only. Based on staff experience, we estimate that the average investment adviser will present performance for 3 portfolios over the course of a year, excluding any related portfolios that an adviser may need to include for purposes of presenting related performance.[19] As noted above, we estimate that 40 percent, or 6,186 advisers, provide performance information in their advertisements and thus will be subject to this collection of information burden.

We expect that the calculation of net performance may be modified every time an adviser chooses to update the advertised performance. We estimate that after initially preparing net performance for each portfolio, investment advisers will incur a burden of 3 hours to update the net performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance of each portfolio 3.5 times each year.[20]

Time Period Requirement in Advertisements

We are no longer including our prior estimate that an investment adviser that elects to present performance results in an advertisement will incur an initial burden of 35 hours in preparing performance results of the same portfolio for one-, five-, and ten-year periods (excluding private funds), taking into account that these results must be prepared on a net basis (and may also be prepared and presented on a gross basis), as this estimate related to initial burdens of the rule only. We estimate that after initially preparing one-, five-, and ten-year performance for each portfolio, investment advisers will incur a burden of 8 hours to update the performance for these time periods for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance 3.5 times each year.[21]

Related Performance

We are no longer including our prior estimate that an investment adviser that elects to present related performance in an advertisement will incur an initial burden of 30 hours, with respect to each advertised portfolio or composite aggregation of portfolios, in preparing the relevant performance of all related portfolios, as this estimate related to initial burdens of the rule only.

We estimate that 40 percent of advisers (or 6,186 advisers) will have other portfolios with substantially similar investment policies, objectives, and strategies as those offered in the advertisement and choose to include related performance.[22] We estimate that after initially preparing related performance for each portfolio or composite aggregation of portfolios, investment advisers will incur a burden of 5 hours to update the performance for each subsequent presentation. We continue to estimate that advisers will update the relevant related performance 3.5 times each year.[23]

[13] Rule 206(4)–1(d).

[14] *Id.* at (d)(2).

[15] *Id.* at (d)(4).

[16] *Id.* at (d)(5).

[17] *Id.* at (d)(7).

[18] *See supra* note 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 6,186 advisers indicated that they include performance results in their advertisements in response to Item 5.L of Form ADV. 6,186 advisers/15,555 total advisers registered as of September 2023 = approximately 40%; *see also* Adopting Release, *supra* footnote 1, at section IV.B.

[19] The burden associated with calculating net performance in connection with presenting related performance is discussed below.

[20] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours × 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

[21] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (8 hours × 3.5 times per year = 28 hours; 28 hours/2 = 14 hours each).

[22] *See supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); we assume that all advisers that indicated that they include performance results, *see supra* footnote 18 and accompanying text, include related performance.

[23] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours × 3.5 times per year = 17.5 hours; 17.5 hours/2 = 8.75 hours each).

Extracted Performance

We are no longer including our prior estimate that an investment adviser that elects to present extracted performance in an advertisement will incur an initial burden of 10 hours in preparing the performance results of the total portfolio from which the performance is extracted in order to provide or offer to provide such performance results to investors, as this estimate related to initial burdens of the rule only. For purposes of this analysis, we assume that 40 percent of advisers will include extracted performance.[24] We estimate that after initially preparing the performance of the total portfolio from which extracted performance is extracted, investment advisers will incur a burden of 2 hours to update the performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant total portfolio performance 3.5 times each year.[25] We also estimate that registered investment advisers may incur external costs in connection with the requirement to provide performance results of a total portfolio from which extracted hypothetical performance is extracted. We estimate that the average annual costs associated with printing and mailing this information upon request will be collectively $592 for all documents associated with a single registered investment adviser.

Hypothetical Performance

We are no longing including our prior estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 7 hours in preparing and adopting policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement, as this estimate related to initial burdens of the rule only. For purposes of this analysis, we estimate that 21 percent of advisers will include hypothetical performance in advertisements.[26]

We continue to estimate that advisers that use hypothetical performance will disseminate advertisements containing hypothetical performance 20 times each year, including in certain one-on-one communications that meet the rule's definition of advertisement. We estimate that after adopting appropriate policies and procedures, an adviser will incur a burden of 0.25 hours to categorize investors according to their likely financial situation and investment objectives pursuant to the adviser's policies and procedures.[27]

Additionally, we are no longer including our prior estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 20 hours in preparing the information sufficient to understand the criteria used and assumptions made in calculating, as well as risks and limitations in using, the hypothetical performance, in order to provide such information, which may in certain circumstances be upon request, as this estimate related to initial burdens of the rule only. We estimate that after initially preparing the underlying information, investment advisers will incur a burden of 3 hours to update the information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update their hypothetical performance, and thus the underlying information, 3.5 times each year.[28]

We estimate that registered investment advisers may incur external costs in connection with the requirement to provide this underlying information upon the request of an investor or prospective investor in a private fund. We estimate that the average annual costs associated with printing and mailing this underlying information upon request will be collectively $592 for all documents associated with a single registered investment adviser.[29]

Predecessor Performance

The marketing rule imposes conditions on an adviser's use of predecessor performance. We are no longer including our prior estimate that an investment adviser that elects to present predecessor performance in an advertisement will incur an initial burden of 10 hours in preparing the relevant performance results and associated disclosures, as this estimate related to initial burdens of the rule only.

We previously estimated that 2% of advisers (or 275 advisers) will include predecessor performance in an advertisement, but we are increasing this estimate to 9%.[30] We estimate that after initially preparing predecessor performance, investment advisers will incur a burden of 1 hour to update the relevant disclosures and performance information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant disclosures 3.5 times each year.[31] Table 4 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 4—PERFORMANCE

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
ESTIMATES FOR NET PERFORMANCE					
Updating performance	5.25	×	$372 (compliance manager)	$1,953	

[24] *See supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); we assume that all advisers that indicated that they include performance results, *see supra* footnote 18 and accompanying text, include extracted performance.

[25] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (2 hours × 3.5 times per year = 7 hours; 7 hours/2 = 3.5 hours each).

[26] *See supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 3,260 advisers indicated that they include hypothetical performance in their advertisements in response to Item 5.L of Form ADV. 3,260 advisers/15,555 total advisers registered as of September 2023 = approximately 21%. *See also* Adopting Release, *supra* footnote 1, at section IV.B.

[27] We believe that an adviser's chief compliance officer will complete this task (20 presentations per year × 0.25 hours each = 5 hours per year).

[28] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours × 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

[29] *See supra* footnote 9 for a discussion of estimated mailing costs.

[30] *See supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 1,407 advisers indicated that they include predecessor performance in their advertisements in response to Item 5.L of Form ADV. 1,407 advisers/15,555 total advisers registered as of September 2023 = approximately 9%. *See also* Adopting Release, *supra* footnote 1, at section IV.B.

[31] We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (1 hour × 3.5 times per year = 3.5 hours; 3.5 hours/2 = 1.75 hours each).

TABLE 4—PERFORMANCE—Continued

	Internal hour burden		Wage rate [1]	Internal time costs	Annual external cost burden
	5.25	×	$440 (compliance attorney)	$2,310	
Total burden per adviser	10.5			$4,263	
Total number of affected advisers	× 6,186			× 6,186	
Sub-total burden	64,953 hours			$26,370,918	
ESTIMATES FOR PERFORMANCE TIME PERIOD REQUIREMENT					
Updating performance	14	×	$372 (compliance manager)	$5,208	
	14	×	$440 (compliance attorney)	$6,160	
Total burden per adviser	28			$11,368	
Total number of affected advisers	× 6,186			× 6,186	
Sub-total burden	173,208 hours			$70,322,448	
ESTIMATES FOR RELATED PERFORMANCE					
Updating performance for all related portfolios	8.75	×	$372 (compliance manager)	$3,255	
	8.75	×	$440 (compliance attorney)	$3,850	
Total burden per adviser	17.5			$7,105	
Total number of affected advisers	× 6,186			× 6,186	
Sub-total burden	108,255 hours			$43,951,530	
ESTIMATES FOR EXTRACTED PERFORMANCE					
Updating performance	3.5	×	$372 (compliance manager)	$1,302	
	3.5	×	$440 (compliance attorney)	$1,540	
Total burden per adviser	7			$2,842	$592
Total number of affected advisers	× 6,186			× 6,186	× 6,186
Sub-total burden	43,302 hours			$17,580,612	$3,662,112
ESTIMATES FOR HYPOTHETICAL PERFORMANCE					
Updating policies and procedures	5	×	$638 (chief compliance officer)	$3,190	
Updating disclosures and underlying information	5.25	×	$372 (compliance manager)	$1,953	
	5.25	×	$440 (compliance attorney)	$2,310	
Total burden per adviser	15.5			$7,453	$592
Total number of affected advisers	× 3,260			× 3,260	× 3,260
Sub-total burden	50,530 hours			$24,296,780	$1,929,920
ESTIMATES FOR PREDECESSOR PERFORMANCE					
Updating disclosures and performance	1.75	×	$372 (compliance manager)	$651	
	1.75	×	$440 (compliance attorney)	$770	
Total burden per adviser	3.5			$1,421	
Total number of affected advisers	× 1,407			× 1,407	
Sub-total burden	4,924.5 hours			$1,999,347	
TOTAL ESTIMATED TIME BURDEN FOR PERFORMANCE REQUIREMENTS					
	445,173 hours			$184,521,635	$5,592,032

Notes:
1. *See* SIFMA Report, *supra* footnote 8.

Total Hour Burden Associated With Rule 206(4)–1

Accordingly, we estimate the total annual hour burden for investment advisers registered or required to be registered with the Commission under proposed rule 206(4)–1 to prepare testimonials and endorsements, third-party ratings, and performance results disclosures will be 595,210 hours, at a time cost of $219,833,026. The total external burden costs would be $5,974,582. The following chart summarizes the various components of the total annual burden for investment advisers.

TABLE 5—TOTALS

	Internal hour burden	Internal burden time cost	External cost burden
General Prohibitions	93,330	$12,288,450	
Testimonials and Endorsements	54,927	22,300,362	$382,550
Third-Party Ratings	1,780	722,579	
Performance	445,173	184,521,635	5,592,032
Total annual burden	595,210 hours	219,833,026	5,974,582

Cost burden is the cost of goods and services purchased to comply with rule 206(4)–1, such as legal and accounting services. The cost burden does not include the hour burden discussed in above. Estimates are based on the Commission's examination and oversight experience. As summarized in Table 5 above, we estimate the total external cost per all advisers per year to be $5,974,582, with the total per adviser per year to be $384.[32]

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by August 30, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 25, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–14363 Filed 6–28–24; 8:45 am]

BILLING CODE 8011–01–P

[32] This estimate is based upon the following calculations: $5,974,582 (total annual external cost burden)/15,555 (number of advisers) = $384.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100417; File No. SR–FICC–2024–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement

June 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''Rules'') [3] to (1) adopt a requirement that each Netting Member submits all eligible secondary market transactions, both for repurchase agreements and certain categories of cash transactions, to which it is a counterparty to FICC for clearance and settlement and define the scope of such trade submission requirement; (2) adopt ongoing membership requirements and other measures that would facilitate FICC's ability to identify and monitor Netting Members' compliance with the trade submission requirement, and adopt fines and other disciplinary actions to address a Netting Member's failure to submit transactions in compliance with that requirement; (3) enhance the Rules relating to the initial qualifications and ongoing standards for membership to improve FICC's ability to manage the credit risks presented by Netting Members; and (4) make other revisions to the Rules to clarify, conform and enhance the disclosures of the Rules, as described below.

These proposed rule changes are primarily designed to comply with the requirements of Rule 17ad–22(e)(18)(iv)(A) and (B) under the Act, as described below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities, including FICC.[5] These amendments require, among other things, that FICC establish objective, risk-based, and publicly disclosed criteria for participation that (i) require FICC's Netting Members submit for clearance and settlement all of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Terms not defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[4] 17 CFR 240.17ad–22(e)(18)(iv)(A) and (B). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Adopting Release'', and the rules adopted therein referred to herein as ''Treasury Clearing Rules'').

[5] *Supra* note 4.