OMB CONTROL NUMBER: 3235-0278

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 204-2

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

On February 15, 2023, the Commission adopted amendments to rule 15c6-1 under the Securities Exchange Act of 1934 (the "Exchange Act") that shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business day after the trade date ("T+1") (the "T+1 rule").[4] The Commission also adopted new rule 15c6-2(a) under the Exchange Act to promote the completion of allocations, confirmations,

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

2 17 CFR 275.204-2.

3 *See id*., at 275.204-2(e). 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.

4 *See* 17 CFR § 240.15c6-1; Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 96930 Feb. 15, 2023) [88 FR 13872 (Mar. 6, 2023)] ("T+1 Adopting Release"), available at available at https://www.sec.gov/rules/final/2023/34-96930.pdf.

and affirmations by the end of trade date for transactions between broker-dealers and their institutional customers, and which requires broker-dealers to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.[5] The Commission also adopted amendments to rule 204-2 under the Advisers Act (the "books and records rule") to require registered investment advisers to make and keep records of the allocations, confirmations, and affirmations for securities transactions subject to the requirements of Rule 15c6-2(a).

Amended rule 204-2(a)(7)(iii) will require investment advisers registered or required to be registered under Section 203 of the Advisers Act to make and keep true, accurate and current certain records with respect to any transaction that is subject to the requirements of Rule 15c6-2(a), specifically those transactions where a broker-dealer engages in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of rule 15c6-1(a). The required records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. As with other records required under rule 204-2(a)(7), advisers will be required to keep originals of written confirmations received, and copies of all allocations and affirmations sent or received, but may maintain records electronically if they satisfy certain conditions under rule 204-2(g).

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[5] 17 CFR § 240.15c6-2.

The collection of information under rule 204-2 is necessary for the Commission staff to use in its regulatory and examination program. The collection has been previously approved and subsequently extended under Office of Management and Budget ("OMB") control number 3235-0278 (expiring October 31, 2024), is found at 17 CFR 275.204-2, and is mandatory. 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 is important for the Commission staff's use in its regulatory and examination program and will be helpful to monitor the transition from T+2 to T+1. The timing of communicating allocations to the broker or dealer is a critical pre-requisite to help ensure that confirmations can be issued in a timely manner, and affirmation is the final step necessary for an adviser to acknowledge agreement on the terms of the trade or alert the broker or dealer of a discrepancy. The new recordkeeping requirements for investment advisers should help establish that obligations of the various parties involved in the settlement process related to achieving a matched trade have been met. Moreover, the amendments to rule 204-2 are intended to reduce risk following the transition to T+1 by improving affirmation rates.

The respondents to the rule are investment advisers registered with the Commission for any transaction that is subject to the requirements of Rule 15c6-2(a). The likely respondents for the amendments to the rule will be the investment advisers registered with the Commission that manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6-2(a). Responses provided to the Commission in the context of its

examination and oversight program are generally kept confidential subject to applicable law.[6]

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 rule, including the amendments, are not duplicated elsewhere.

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 all clients of both large and small firms. In addition, this approach is designed to support the Commission's policy objectives in achieving same-day affirmation by helping to ensure that trades in which advisers are involved timely settle on T+1 and establishing different conditions for large and small advisers would negate these benefits. Staff will use the information that advisers maintain to help prepare for examinations and verify that an adviser has completed the steps necessary to complete settlement in a timely manner in accordance with rule 15c6-1(a). Requiring these records also will help advisers research and remediate issues that may cause delays in the issuance of allocations and

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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).

affirmations, will improve their timeliness overall, and will help them establish that they have timely met contractual obligations, if applicable, or any requirements broker-dealers impose in light of their compliance obligations under final Rule 15c6-2(a). 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 Less Frequent 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

In its release proposing to amend rule 204-2, the Commission requested public comment on the effect of information collections under these amendments.[8] We published a notice soliciting comments on the collection of information requirements in the T+1 Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission's solicitation of public comments included estimating and requesting public comments on updated burden estimates for all information collections under this OMB control number (i.e., both changes associated with the rulemaking and other burden updates).

Some commenters discussed aspects of the burden estimates for the proposed amendments to rule 204-2. For example, one commenter stated that the Commission underestimated the time and cost burdens for implementing the proposed recordkeeping requirements but did not provide specific estimates. Several comments also addressed timestamping. One suggested that the costs could be higher than we estimated in the proposal, while another stated that timestamps are already included in electronic communications protocols. In response to those comments, which we addressed in the T+1 Adopting Release, we increased the burden estimates to three hours annually (from two hours as proposed) and are not amortizing any of the burdens.[9]

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8 Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022) [87 FR 10436 (Feb. 24, 2022)] ("T+1 Proposing Release").

9 *See* T+1 Adopting Release at section XI.A.

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.

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. Burden of Information Collection

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. The Commission estimates that based on Form ADV filings received through August 31, 2022, approximately 12,991 registered advisers, or 86% of the total registered advisers, will be subject to the new recordkeeping requirements in amended Rule 204-2 because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6-2(a). The approved annual aggregate burden for rule 204-2 is currently 2,764,563 hours, based on an estimate of 13,724 registered advisers, with total internal monetized costs of $175,980,426.

The estimated additional burdens associated with the final amendments to Rule 204-2, which take into account an increase in annual hour burdens and internal cost burdens due to the

comments received and an increase in the internal wage rates due to an updated inflation adjustment reflecting inflation through the end of 2022, are reflected in the table below.

Table 1. *Summary of burden estimates for the final amendments to Rule 204-2.*

Advisers	Annual internal hour burden[1]	Internal Wage rate[2]	Internal time cost per year[3]
12,991 advisers[4]	3 hours per adviser[5] **Incremental aggregate burden = 38,973 hours** (12,991 advisers x 3 hours = 38,973 hours)	$77.50 per hour	**Incremental aggregate internal cost = $3,020,408** ($77.5 x 38,973 hours = $3,020,408)
Currently approved aggregate burden[6]	2,764,563 aggregate hours per year	$175,980,426	
Estimated revised aggregate burden[7]	2,803,536 aggregate hours per year	$179,000,834	

Notes:

1. We are not amortizing the initial internal hour burden over a three-year period. Instead, we believe that the estimated internal hour burdens associated with the final amendments will be annual burdens.

2. As with our estimates relating to the previous amendments to Advisers Act Rule 204-2, the Commission expects that performance of these functions will most likely be allocated between compliance clerks and general clerks. Data from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation through the end of 2022, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these position are $82 and $73, respectively. A blended hourly rate is therefore: ($82 + $73) ÷ 2 = $77.5 per hour.

3. Under the currently-approved PRA for Rule 204-2, there is no cost burden other than the internal cost of the hour burden described herein, and we believe that the amendments will not result in any external cost burden.

4. We estimate there were 15,160 total registered advisers as of June 2022 based on Form ADV filings received through the Investment Adviser Registration Depository (IARD) through August 31, 2022. Of these 15,160 advisers, we estimate that 12,991 will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6-2(a). We have excluded advisers that only have individuals or high-net-worth individuals as clients in Item 5.D. and do not report participation in any wrap fee program in Item 5.I. We also excluded advisers that do not report any regulatory assets under management in Item 5.F.

5. We estimate an average of three hours per adviser to update procedures and instruct personnel to make and retain the required records in the advisers' recordkeeping systems, including any such documents it may receive in paper format and does not currently retain, and to actually retain those records for the required retention periods. Because we believe that many advisers already have recordkeeping systems to accommodate these records, which include, at a minimum, spreadsheet formats and email retention systems that have an ability to capture a date and time stamp, such advisers are likely to incur minimal incremental costs associated with the new recordkeeping requirement.

6. Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204-2, OMB Report, OMB 3235-0278 (Aug. 2021).

7. The new recordkeeping burden will add 38,973 aggregate annual hours, resulting in a revised estimate of 2,803,536 aggregate hours for all registered advisers subject to these amendments to Rule 204-2 (2,764,563 current hours + 38,973 additional hours = 2,803,536 aggregate hours per year). The new recordkeeping burden would also add $3,020,408 in aggregate internal costs, resulting in a revised estimate of $179,000,834 in aggregate internal costs ($175,980,426 current internal costs + $3,020,408 additional internal costs = $179,000,834).

13. Cost to Respondents

There is no cost burden other than the cost of the hour burden described above.

14. Cost to the 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 2,764,563 hours, based on an estimate of 13,724 registered advisers, with total internal monetized costs of $154,304,664. We estimate that the amendments to the recordkeeping rule will result in an aggregate increase in the collection of information burden estimate by 38,973 hours. This would yield an annual estimated aggregate burden of 2,803,536 hours under amended rule 204-2 for all registered advisers, with total monetized costs of $179,000,834.16**.**

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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.