

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 204-5 under the Investment Advisers Act of 1940

A. JUSTIFICATION

1. Necessity for the Information Collection

On June 5, 2019, the Securities and Exchange Commission (the “Commission” or “SEC”) adopted amendments to Form ADV¹, and related rules, including, rule 204-5 under the Investment Advisers Act of 1940.² Rule 204-5 requires registered investment advisers to provide a brief relationship summary to retail investors to inform them about certain aspects of the relationships and services the firm offers (the “relationship summary”). Rule 204-5 requires an investment adviser to deliver an electronic or paper version of the relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. The adviser must also have made a onetime initial delivery of the relationship summary to all existing clients within a specified time period after the effective date of the rule. With respect to existing clients, the adviser must also deliver the most recent relationship summary before or at the time of (i) opening any new account that is different from the retail investor’s existing account(s); (ii) recommending that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii)

¹ 17 CFR 279.1.

² Form CRS Relationship Summary; Amendments to Form ADV, Release Nos. IA-5247; 34-86032 (June 5, 2019) [84 FR 33492 (Jul. 12, 2019)]. The amendments to Form ADV were proposed in Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on use of Certain Names or Titles, Investment Advisers Act Release No. 4888. Exchange Act Release No. 83063 (Apr. 18, 2018) [83 FR 23848 (May 23, 2018)].

recommending or providing a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account. The adviser is required to post a current version of its relationship summary prominently on its public website (if it has one), and is required to communicate any changes in an amended relationship summary to retail investors who are existing clients within 60 days after the amendments are required to be made and without charge. The investment adviser also must deliver a current relationship summary to each retail investor within 30 days upon request and make a copy of the relationship summary available upon request without charge. Where a relationship summary is delivered in paper format, the adviser may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information. The adviser must also include a telephone number where retail investors can request up-to-date information and a copy of the relationship summary.

Rule 204-5 contains a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“Paperwork Reduction Act”).³ The collection of information is necessary to provide advisory clients, prospective clients and the Commission with information about the investment adviser and its business, conflicts of interest, and personnel. The title for the collection of information is: “Rule 204-5 under the Investment Advisers Act of 1940” and the Commission 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. 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

³ 44 U.S.C. 3501 *et seq.*

OMB control number. This collection of information will be found at 17 CFR 275.204-5 and will be mandatory. Responses will not be kept confidential.

2. Purpose and Use of the Information Collection

The purpose of Form CRS is to assist retail investors in making an informed choice when choosing an investment firm and professional, and type of account. Retail investors can use the information required in Form CRS to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs. The Commission also will use the information to manage its regulatory and examination programs.

3. Consideration Given to Information Technology

A firm will be permitted to deliver the relationship summary (including updates) electronically, consistent with the Commission's guidance regarding electronic delivery.⁴ Rule 204-5 also requires that a firm that maintains a public website to post their relationship summaries on their websites in a way that is easy for retail investors to find. Where a relationship summary is delivered in paper format, the adviser may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information. Firms also must include in their relationship summaries a telephone number for investors to call to obtain documents.

⁴ See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]. See also Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]; and Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

4. Duplication

The collection of information requirements of the form, including the amendments to the form, are not duplicated elsewhere.⁵ While Form ADV Part 3 requires firms to summarize topics also required to be discussed in Form ADV Part 1 or Part 2, the Part 3 has a distinct purpose to help retail investors select or determine whether to remain with a firm or financial professional by providing better transparency and summarizing in one place selected information about a particular investment adviser. The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule.

5. Effect on Small Entities

The information collection requirements of rule 204-5 do not distinguish between investment advisers that are small entities and other investment advisers. Because the protections of the Advisers Act are intended to apply equally to retail investor clients and customers of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed rules and rule amendments. We believe that rule 204-5 and the relationship summary result in multiple benefits to all retail investors, including alerting retail investors to certain information to consider when choosing a firm and a financial professional and prompting retail investors to ask informed questions. In addition, the content of the relationship summary facilitates

⁵ Firms are required to include cross-references to where investors could find additional information, such as in the Form ADV Part 2 brochure and brochure supplement for investment advisers or on the firm's website or in the account opening agreement for broker-dealers. For electronic versions of the relationship summary, we require firms to use hyperlinks to the cross-referenced document if it is available online.

comparisons across firms. The Commission believes that these benefits should apply to retail investors of smaller firms as well as retail investors of larger firms. To establish different disclosure requirements for small entities would diminish this investor protection for clients of small advisers. 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

The collection of information required by the form is necessary to protect investors and deter potentially misleading sales practices by providing retail investors and potential retail investors, as well as the Commission, with information about the investment adviser, the services it offers to retail investors, applicable standard of conduct, fees, conflict of interests, and disciplinary events. Providing this information before or at the time the adviser enters into an investment advisory agreement with a retail investor, as well as at certain points during the relationship (*e.g.*, switching or adding account types) helps retail investors to make a more informed choice among the types of firms and services available to them. The consequences of not collecting this information include continued retail investor confusion about the services and fees advisers offer and the differences among broker-dealers, investment advisers, and firms registered with the Commission as both broker-dealers and investment advisers. In addition, if the information is either not collected or is collected less frequently, the Commission's ability to protect investors would be reduced.

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

Not applicable.

8. Consultation with Persons Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment adviser profession 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 facing the industry. The Commission requested public comment on the collection of information requirements in rule 204-5 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

Not Applicable.

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. Estimate of Hour Burden

We estimate the total collection of information burden for rule 204-5 to be 1,137,413 annual aggregate hours per year,⁶ or 124 hours per respondent,⁷ for a total annual aggregate monetized cost of \$77,344,061,⁸ or \$8,402⁹ per adviser.

The likely respondents to this information collection are approximately 9,205¹⁰ investment advisers registered with the Commission that are required to deliver a relationship summary to retail investors pursuant to rule 204-5.¹¹ We also note that these figures include the 325 registered broker-dealers that are dually registered as investment advisers.

A. Posting of the Relationship Summary to Website

⁶ 160,128 hours for additional delivery to existing clients based on material changes to accounts or scope of relationship + 7,362 annual hours to post amended relationship summary to website + 848,416 hours for delivery to existing clients to communicate updated information in amended relationship summaries + 116,904 hours for delivery to new or prospective clients + 4,603 hours to make paper copies of the relationship summary available upon demand = 1,137,413 annual total hours for investment advisers to post and deliver the relationship summary under proposed rule 204-5.

⁷ 1,137,413 hours (initial and other deliveries) / 9,205 advisers = 124 hours per adviser.

⁸ \$10,888,704 for delivery to existing clients based on material changes to accounts or scope of relationship + \$500,627 to post amended relationship summary to website + \$57,692,288 for delivery to existing clients to communicate updated information in amended relationship summaries + \$7,949,472 for delivery to new or prospective clients + \$312,970 for making paper copies of the relationship summary available upon demand = \$77,344,061 in total annual aggregate monetized cost for investment advisers to post and deliver the relationship summary under proposed rule 204-5.

⁹ \$77,344,061 / 9,205 advisers = \$8,402 per adviser.

¹⁰ Although we use numbers of individual clients and RAUM attributable to individual clients reported in Form ADV Item 5.D. to estimate “retail RIAs” and “retail investors,” some of these individual clients may not be “retail investors” for purposes of Form CRS delivery requirements and we have not reviewed whether these advisers are in fact required to comply with Form CRS delivery requirements.

¹¹ This figure includes the 325 registered broker-dealers that are dually registered as investment advisers as of December 31, 2021.

Under rule 204-5, advisers are required to post a current version of their relationship summary prominently on their public website (if they have one). However, as rule 204-5 has now been in effect for several years, we expect that advisers have already fulfilled the initial requirement to post a relationship summary on their public website if they have one. The expected burden of updating posted relationship summaries is discussed in section B.iii below.

B. Delivery to Existing Clients

i. One-Time Initial Delivery to Existing Clients

Rule 204-5 required investment advisers to make a one-time initial delivery of their relationship summary to each of their retail investors. However, as rule 204-5 has now been in effect for several years, we expect that this one-time initial obligation has been completed and do not expect any further burdens. The expected burden of communicating changes to amended relationship summaries is discussed in section B.iii below.

ii. Additional Delivery to Existing Clients

Investment advisers are required to deliver the relationship summary to existing clients before or at the time they open a new account that is different from the retail investor's existing account(s). In addition, delivery is required before or at the time the adviser (i) recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment, or (ii) recommends or provides a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account.

While these specific triggers may still impose operational and supervisory burdens on firms, we believe that they are more easily identified and monitored, such that firms should not incur significant burdens as described by commenters to implement entirely new supervisory, administrative, and operational processes needed to monitor events that cause a material change. We expect that such delivery takes place among 10% of an adviser's retail investors annually and we estimate each adviser incurs 16 hours per year to deliver the relationship summary in these situations. We therefore estimate a total annual aggregate hours of 160,128,¹² with a monetized cost of \$1,088 per adviser¹³ and \$10,888,704 in aggregate.¹⁴

iii. Posting of Amended Relationship Summaries to Websites and Communicating Changes to Amended Relationship Summaries, Including by Delivery

Investment advisers are required to amend their relationship summaries within 30 days of when any of the information becomes materially inaccurate. Investment advisers are also required to communicate any changes in an amended relationship summary to existing clients who are retail investors within 60 days after the updates are required to be

¹² 16 hours x (9,205 existing advisers + 803 new advisers) = 160,128 total aggregate hours.

¹³ Based on data from the SIFMA Office Salaries Report, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of \$68 per hour. 16 hours per adviser x \$68 = \$1,088 per adviser. We anticipate that advisers do not incur any incremental postage costs in the delivery of the relationship summary to existing clients for changes in accounts, because we anticipate that advisers make such deliveries with another mailing the adviser was already delivering to clients, such as new account agreements and other documentation normally required in such circumstances.

¹⁴ \$1,088 in monetized costs per adviser x (9,205 existing advisers + 803 newly registered advisers) = \$10,888,704 in total aggregate costs.

made and without charge. Based on the historical frequency of amendments made on Form ADV Parts 1 and 2, we estimate that on average, each adviser preparing a relationship summary likely amends the disclosure an average of 1.71 times per year.¹⁵ We estimate that preparation of the relationship summary for posting to the web and the posting itself requires 0.5 hours. Using the same percentage of investment advisers reporting public websites, 93% of 9,205 advisers would incur a total annual burden of 0.86 hours per adviser, or 7,362 hours in aggregate,¹⁶ to post the amended relationship summaries to their website. This translates into an annual monetized cost of \$58.48 per adviser, or \$500,627 in the aggregate for existing registered advisers with relationship summary obligations.¹⁷

Investment advisers are also required to communicate any changes in an amended relationship summary to existing clients who are retail investors. The communication can be made by delivering the relationship summary or by communicating the information in another way. For this requirement, we estimate that 50% of advisers will choose to deliver the relationship summary to communicate the updated information, and that the delivery will be made along with other disclosures already required to be delivered. We believe that it is likely that the other 50% of advisers will incorporate all

¹⁵ This estimate is based on IARD system data regarding the number of filings of Form ADV amendments.

¹⁶ $0.5 \text{ hours to post the amendment} \times 1.71 \text{ amendments annually} = 0.86 \text{ hours per adviser annually to post amendments to the website. } 0.86 \times 9,205 \text{ existing advisers amending the relationship summary} \times 93\% \text{ of advisers with public websites} = 7,362 \text{ aggregate annual hours to post amendments of the relationship summary.}$

¹⁷ Based on data from the SIFMA Office Salaries Report, we expect that the posting requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of \$68 per hour. $0.86 \text{ hours per adviser} \times \$68 = \$58.48 \text{ per adviser. } \$58.48 \text{ per adviser} \times 93\% \times 9,205 \text{ existing advisers} = \$500,627 \text{ in annual monetized costs.}$

of the updated information in their Form ADV Part 2, like the summary of material changes or other disclosures, which they are already obligated to deliver in order to avoid having to deliver two documents. We estimate a burden of 848,416 hours,¹⁸ or 184.34 hours per adviser,¹⁹ at a monetized cost of \$57,692,288 in aggregate,²⁰ or \$12,535 per adviser,²¹ for the 50% of advisers that choose to deliver amended relationship summaries in order to communicate updated information.²²

The Commission is also requiring that all firms make available a copy of the relationship summary upon request without charge. Where a relationship summary is delivered in paper format, the adviser may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information.

¹⁸ 9,205 advisers amending the relationship summary x 5,390 retail clients per adviser x 50% delivering the amended relationship summary to communicate updated information x 0.02 hours per delivery x 1.71 amendments annually = 848,416 hours to deliver amended relationship summaries.

¹⁹ 5,390 retail clients per adviser x 0.02 hours per delivery x 1.71 amendments annually = 184.34 hours per adviser.

²⁰ Based on data from the SIFMA Office Salaries Report, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of \$68 per hour. 848,416 hours x \$68 = \$57,692,288. We estimate that advisers will not incur any incremental postage costs to deliver the relationship summary for communicating updated information by delivering the relationship summary, because we expect that advisers will make the delivery along with other documents already required to be delivered, such as an interim or annual update to Form ADV, or will deliver the relationship summary electronically.

²¹ Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of \$68 per hour. 184.34 hours per adviser x \$68 per hour = \$12,535 per adviser.

²² For the other 50% of advisers that may choose to communicate updated information in another disclosure, we estimate no added burden because these advisers will be communicating the information in other disclosures they are already delivering like the Form ADV Part 2 brochure or summary of material changes.

Firms also must include in their relationship summaries a telephone number for investors to call to obtain documents. We estimate that the 9,205 advisers with relationship summary obligations, on average, require 0.5 hours each annually to comply with this requirement. Therefore, we estimate that the 9,205 advisers incur a total of 4,603 aggregate burden hours to make copies of the relationship summary available upon request,²³ with a monetized cost per adviser of \$34, or \$312,970 in aggregate monetized cost.²⁴ We acknowledge that the burden may be more or less than 0.5 hours for some advisers, but we believe that, on average, 0.5 hours is an appropriate estimate for calculating an aggregate burden for the industry for this collection of information.

C. Delivery to New Clients or Prospective New Clients

Data from the IARD system indicates that of the 14,777 advisers registered with the Commission, 9,205 have retail investors, and on average, each has 5,390 clients who are retail investors.²⁵ We estimate that the client base for investment advisers will grow by approximately 11.8% annually.²⁶ Based on our experience with Form ADV Part 2,

²³ 0.5 hours to make paper copies of the relationship summary available upon request x 9,205 advisers with relationship summary obligations = 4,603 hours.

²⁴ Based on data from the SIFMA Office Salaries Report, we expect that the requirement for advisers to make paper copies of the relationship summary available upon request will most likely be performed by a general clerk at an estimated cost of \$68 per hour. 0.5 hours per adviser x \$68 = \$34 in monetized costs per adviser. \$34 per adviser x 9,205 advisers with relationship summary obligations = \$312,970 total aggregate monetized cost.

²⁵ This average is based on advisers' responses to Item 5 of Part 1A of Form ADV as of December 31, 2021.

²⁶ In the Proposing Release, we determined this estimate based on IARD system data. See Proposing Release, *supra* footnote 2 at section V. The number of retail clients reported by RIAs changed by 16.9% between December 2018 and 2019, 13.1% between December 2019 and 2020 and by 5.3% between December 2020 and 2021. $(16.9\% + 13.1\% + 5.3\%) / 3 = 11.8\%$ average annual rate of change over the past two years. We did not receive comments on this estimate.

we estimate the annual hour burden for initial delivery of a relationship summary is the same by paper or electronic format, at 0.02 hours for each relationship summary,²⁷ or 12.7 annual hours per adviser.²⁸ Therefore, we estimate that the aggregate annual hour burden for initial delivery of the relationship summary to new clients is 116,904 hours,²⁹ at a monetized cost of \$7,949,472, or \$864 per adviser.³⁰

²⁷ This is the same as the estimate for the burden to deliver the brochure required by Form ADV Part 2. See Brochure Adopting Release, supra note **Error! Bookmark not defined.**

²⁸ 5,390 clients per adviser with retail clients x 11.8% = 636 new clients per adviser. 636 new clients per adviser x 0.02 hours per delivery = 12.7 hours per adviser for delivery of a relationship summary to new or prospective new clients.

²⁹ 12.7 hours per adviser for delivery obligation to new or prospective clients x 9,205 advisers = 116,904 hours.

³⁰ Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of \$68 per hour. 116,904 hours x \$68 = \$7,949,472. We estimate that advisers will not incur any incremental postage costs to deliver the relationship summary to new or prospective clients because we estimate that advisers will make the delivery along with other documentation normally provided in such circumstances, such as Form ADV Part 2. \$7,949,472 / 9,205 investment advisers = \$864 per adviser.

Table 1: Summary of Revised Annual Responses, Burden Hours, and Burden Hour Costs Estimates for Each Information Collection

Rule 204-5 under the Investment Advisers Act of 1940	Annual No. of Responses			Annual Time Burden (Hrs.)			Monetized Time Burden (\$)		
	Requested	Previously Approved	Change	Requested	Previously Approved	Change	Requested	Previously Approved	Change
Third Party Disclosure (Posting of the Relationship Summary to Website)	0	8,235	(8,235)	0	4,072	(4,072)	0	252,469	(252,469)
Third Party Disclosure (One-time Initial Delivery to Existing Clients)	0	32,816,475	(32,816,475)	0	236,204	(236,204)	0	14,643,477	(14,643,477)
Third Party Disclosure (Additional Delivery to Existing Clients)	3,693,929	3,281,647	412,282	160,128	142,256	17,872	10,888,704	8,819,872	2,068,832
Third Party Disclosure (Posting of Amended Relationship Summaries to Website)	14,639	12,899	1,740	7,362	6,487	875	500,627	402,207	98,420
Third Party Disclosure (Communicating Changes to Amended Relationship Summaries)	42,420,779	28,058,086	14,362,693	848,416	561,162	287,254	57,692,288	34,792,044	22,900,244
Third Party Disclosure (Making Copies of the Relationship Summary Available Upon Demand)	9,205	8,235	970	4,603	4,118	485	312,970	255,285	57,685
Third Party Disclosure (Deliver to New Client or Prospective Clients)	5,823,279	1,476,741	4,346,538	116,904	29,646	87,258	7,949,472	1,838,052	6,111,420
Total	51,961,831	65,662,318	(13,700,487)	1,137,413	983,945	153,468	77,344,061	61,003,406	16,340,655

13. Cost to Respondents

There is no cost burden other than the cost of the hour burden described above. External costs for the preparation of the relationship summary are already included for the collection of information estimates for Form ADV, in a separate collection of information associated with Part 3: Form CRS under the Advisers Act. We do not anticipate external costs to rule 204-5 for several reasons, as follows: (i) investment advisers without a public website are not required to establish or maintain one; (ii) we do not expect advisers to incur external costs related to deliveries of the relationship summary due to new account type openings, or material changes to the nature or scope of the relationship, because we expect that advisers will deliver the relationship summary along with new account agreements and other information normally required in such circumstances; (iii) we do not expect investment advisers to incur external costs in delivering amended relationship summaries because we expect that they will make this delivery with other disclosures required to be delivered, such as an interim or annual update to Form ADV; and (iv) we do not expect that advisers will incur external costs to deliver the relationship summary to new or prospective clients because we anticipate that advisers will make the delivery along with other documentation normally provided in such circumstances, such as Form ADV Part 2, or will deliver the relationship summary electronically.

14. Costs to Federal Government

There are no costs to the government directly attributable to proposed rule 204-5.

15. Changes in Burden

We have revised the estimated burden based on new information on the number of SEC-registered investment advisers and the average number of retail investor clients for each adviser who has retail investors that we obtained from Form ADVs filed through the IARD. The number of responses per investment adviser has decreased slightly, as the initial, one-time requirements should now be completed. The increase in hour burden is due to an increase in the estimated number of respondents overall (there was an increase in the number of registered investment advisers and the average number of retail investor clients for each adviser who has retail investors).

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

Not Applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

The Commission is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.