

SUPPORTING STATEMENT

For the Paperwork Reduction Act Information Collection Submission for
Amendments to Rule 204-2 under the Investment Advisers Act of 1940

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 204 of the Investment Advisers Act of 1940 (the “Advisers Act”) provides that investment advisers required to register with the Securities and Exchange Commission (the “Commission” or “SEC”) must make and keep certain records for prescribed periods, and make and disseminate certain reports.¹ Advisers Act rule 204-2 sets forth mandatory requirements for maintaining and preserving specified books and records.² The 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 9, 2022, the Commission proposed rules related to private fund transparency and conflicts of interest as well as amendments to certain rules that govern investment adviser and fund disclosures under the Advisers Act.⁴ The proposed rules and amendments are designed protect those who directly or indirectly invest in private funds by increasing visibility into certain practices, establishing requirements to address certain practices that have the potential to lead to investor harm, and prohibiting adviser activity that is contrary to the public interest and the protection of investors.

The amendments to rule 204-2 would require advisers to retain books and records related to the quarterly statement rule (rule 211(h)(1)-2), the audit rule (rule 206(4)-10), the adviser-led secondaries rule (rule 211(h)(2)-2), and the preferential treatment rule (rule 211(h)(2)-3(b)(1) and (2)). Specifically, the amendments related to the quarterly statement rule would require advisers to (i) retain a copy of any quarterly statement distributed to fund investors as well as a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s); (ii) retain all records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any statement delivered pursuant to the quarterly statement rule; and (iii) make and keep books and records substantiating the adviser’s determination that the private fund it manages is a liquid fund or an illiquid fund pursuant to the

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 15 U.S.C. 80b-1 *et seq.*; Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews Release Nos. IA-5955 (Feb. 9, 2022) available at <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf> (“Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews”).

quarterly statement rule.⁵ The amendments related to the audit rule would require advisers to keep a copy of any audited financial statements along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.⁶ Additionally, the rule would require the adviser to keep a record documenting steps it took to cause a private fund client with which it is not in a control relationship to undergo a financial statement audit that would comply with the rule.⁷ The 204-2 amendments related to the adviser-led secondaries rule would require advisers to retain a copy of any fairness opinion and summary of material business relationships distributed pursuant to the rule along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.⁸ The 204-2 amendments related to the preferential treatment rule would require advisers to retain copies of all written notices sent to current and prospective investors in a private fund pursuant to rule 211(h)(2)-3.⁹ In addition, advisers would be required to retain copies of a record of each addressee and the corresponding dates sent, addresses, and delivery method for each addressee.¹⁰ The information generally is kept confidential subject to the applicable law.¹¹

The collection has been previously approved and subsequently extended under Office of Management and Budget (“OMB”) control number 3235- 0278 (expiring October 31, 2022), and it is found at 17 CFR 275.204-2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number.

2. Purpose and Use of the Information Collection

The purpose of the information collection in rule 204-2 is to assist the Commission’s examination and oversight program. Requiring the creation, maintenance and retention of the above records as part of rule 204-2 would facilitate the Commission’s ability to inspect for and enforce compliance with firms’ obligations with respect to the private fund adviser rules.

The respondents to the rule would be investment advisers registered with the Commission. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential subject to the applicable law.¹² This collection of information is found at 17 CFR 275.204-2 and is mandatory.

⁵ See amendments 204-2(a)(20)(i) and (ii) and (a)(22).

⁶ See amendment 204-2(a)(21)(i).

⁷ See amendment 204-2(a)(21)(ii).

⁸ See amendment 204-2(a)(23).

⁹ See amendment 204-2(a)(7)(v).

¹⁰ *Id.*

¹¹ See section 210(b) of the Advisers Act (15 U.S.C. 80b-10(b)).

¹² See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

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.¹³

4. Duplication

The collection of information requirements of the rule, including the amendments, are not duplicated elsewhere. The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates these requirements whenever it adopts amendments to its rules.

5. Effect on Small Entities

The requirements of the rule would be 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 would not distinguish between small entities and other investment advisers because the protections of the Advisers Act are intended to apply equally to both large and small firms. OMB has previously approved the effect of this collection on all investment advisers in general, including advisers that are small entities. Moreover, it would defeat the purpose of the rule to exempt small entities from these requirements. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Not Conducting Collection

Less frequent information collection would be incompatible with the objectives of the rule and would hinder the Commission's oversight and examination program for investment advisers and thereby reduce 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.

¹³ See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release No. 1945 (May 24, 2001) 66 FR 29224 (May 30, 2001).

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment management industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. In addition, the Commission has requested public comment on the amendments to rule 204-2, including the collection of information requirements resulting from the amendments. Before adopting these amendments, the Commission will receive and evaluate public comments on the amendments and their associated collection of information requirements.

9. Payment or Gift

None.

10. Confidentiality

Responses provided to the Commission pursuant to rule 204-2 in the context of the Commission's examination and oversight program are generally kept confidential subject to the applicable law.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, would be required under this collection of information. The information collection would 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 1995¹⁴ 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 would be investment advisers registered or required to be registered with the Commission. All such advisers would be subject to the amendments to rule 204-2. As of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private funds.¹⁵ We estimate that these advisers would, on average, each provide advice to 9 private funds.¹⁶ We further estimate that

¹⁴ 44 U.S.C. 3501 *et seq.*

¹⁵ See Form ADV, Part 1A, Schedule D, Section 7.B.(1).

¹⁶ See Form ADV, Part 1A, Schedule D, Section 7.B.(1).

these private funds would, on average, each have a total of 67 investors.¹⁷ As a result, an average private fund adviser would have, on average, a total of 603 investors across all private funds it advises. In our most recent Paperwork Reduction Act submission for rule 204-2, we estimated for rule 204-2 a total annual aggregate hour burden of 2,764,563 hours.¹⁸ The table below summarizes the initial and ongoing annual burden estimates associated with the amendments to rule 204-2.¹⁹

Table 1: Rule 204-2 Estimates

	Internal annual burden hours ¹	Wage rate ²	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES				
Retention of account statement and calculation information; making and keeping records re liquid/illiquid fund determination	0.25 hours	\$68 (blended rate for general clerk (\$64) and compliance clerk (\$72))	\$17	\$0
Avg. number of private funds per adviser	9 private funds		9 private funds	\$0
Number of advisers	5,037 advisers		5,037 advisers	\$0
Sub-total burden	11,333.25 hours		\$ 770,661	\$0
Retention of written notices re preferential treatment	0.5 hours	\$68 (blended rate for general clerk (\$64) and compliance clerk (\$72))	\$34	\$0

¹⁷ See Form ADV, Part 1A, Schedule D, Section 7.B.(1).A., #13.

¹⁸ Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204-2, OMB Report, OMB 3235-0278 (Aug. 2021).

¹⁹ We estimate the hourly wage rate for compliance clerk is \$70 and a general clerk is \$62. The hourly wages used are from the Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

Avg. number of private funds per adviser	7 private funds		7 private funds	\$0
Number of advisers	5,037 advisers		5,037 advisers	\$0
Sub-total burden	17,629.5 hours		\$1,198,806	\$0
Retention and distribution of audited financial statements	0.25 hours	\$68 (blended rate for general clerk (\$64) and compliance clerk (\$72))	\$17	\$0
Avg. number of private funds per adviser	9 private funds		9 private funds	\$0
Number of advisers	5,037 advisers		5,037 advisers	\$0
Sub-total burden	11,333.25 hours		\$770,661	\$0
Retention and distribution of fairness opinion and summary of material business relationships	1 hour	\$68 (blended rate for general clerk (\$64) and compliance clerk (\$72))	\$68	\$0
Avg. number of private funds per adviser that conduct an adviser-led transaction	1 private fund		1 private fund	\$0
Number of advisers	504 advisers ³		504 advisers ⁴	\$0
Sub-total burden	504 hours		\$34,272	\$0
Total burden	40,800 hours		\$ 2,774,400	\$0

Notes:

1. Hour burden and cost estimates for these proposed rule amendments assume the frequency of each collection of information for the substantive rule with which they are associated. For example, the hour burden estimate for recordkeeping obligations associated with

the amendments to rule 204-2(a)(20) and (22) would assume the same frequency of collection of information as under rule 211(h)(1)-2.

2. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. *See* section V.D of Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews.

4. *Id.*

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to meet the requirements of rule 204-2, such as for the services of outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience.

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

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

We estimate that amendments to rule 204-2 would result in a revised annual aggregate burden of 2,805,363 hours per year. This would be an aggregate increase of 40,800 hours from the currently approved annual aggregate burden estimates. The internal time cost associated with such increase is set forth in the table above. The changes are due to amendments and updated data. The external cost burden associated with rule 204-2 (\$0) has not changed.

16. Information Collection Planned for Statistical Purposes

None.

17. Approval to Omit OMB Expiration Date

Not Applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.