

**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.<sup>1</sup> Advisers Act rule 204-2 sets forth mandatory requirements for maintaining and preserving specified books and records.<sup>2</sup> The majority of records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years, and in some cases longer.<sup>3</sup> These requirements constitute a mandatory “collection of information,” within the meaning of the Paperwork Reduction Act.

On February 15, 2023, the Commission proposed a new rule 223-1 under the Advisers Act to address how investment advisers safeguard client assets.<sup>4</sup> The proposal includes corresponding amendments to Rule 204-2 requiring advisers to make and keep certain records for client accounts.<sup>5</sup> Specifically, the proposed amendments would require advisers to make and retain: (1) client account identification, (2) custodian information, including copies of qualified

---

<sup>1</sup> 15 U.S.C. 80b-4.

<sup>2</sup> 17 CFR 275.204-2.

<sup>3</sup> 17 CFR 275.204-2(e). The retention period required for the majority of books and records requirements under rule 204-2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser.

<sup>4</sup> Safeguarding Advisory Client Assets, Release No. IA-6240 (Feb. 15, 2023) *available at* <https://www.sec.gov/rules/proposed/2023/ia-6240.pdf>.

<sup>5</sup> *See* proposed rule 204-2(b)(2)(v).

custodian agreements with the adviser, a record of required reasonable assurances from the qualified custodian, and if applicable, a copy of the adviser's written reasonable determination that ownership of certain specified client assets cannot be recorded and maintained under a qualified custodian's possession or control, (3) the basis for the adviser having custody of client assets in the account, (4) any account statements received or sent by the adviser, (5) transaction and position information, (6) any standing letters of authorization and related records to verify that an adviser can avail itself of the proposed exception to the surprise examination requirement, (7). copies of all written notices to clients required under proposed rule 223-1, and any responses thereto, (8) and copies of documents relating to independent public accountant engagements. Advisers would be required to maintain the proposed records for a period of not less than five years as required under the current books and recordkeeping rule.<sup>6</sup> These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities, including assessing compliance with the requirements of the proposed rule.

The collection has been previously approved under Office of Management and Budget ("OMB") control number 3235- 0278 (expiring May 31, 2026), 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

---

<sup>6</sup> See rule 204-2(e)(1).

enforce compliance with firms' obligations with respect to the proposed new rule 223-1 to address how investment advisers safeguard client assets.

The respondents to the rule are investment advisers registered with the Commission. The likely respondents for the amendments to the rule will be all 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.<sup>7</sup> This collection of information is found at 17 CFR 275.204-2 and is mandatory.

### **3. Consideration Given to Information Technology**

The Commission's use of computer technology in connection with this information collection, which has been previously approved by OMB, would not change. The Commission currently permits advisers to maintain records required by the rule through electronic media.<sup>8</sup>

### **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 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

---

<sup>7</sup> See section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

<sup>8</sup> See Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release No. 1945 (May 24, 2001) 66 FR 29224 (May 30, 2001).

protections of the Advisers Act are intended to apply equally to retail investor clients of 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 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**

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 proposed amendments to rule 204-2, including the collection of information requirements resulting from the proposed amendments. Before adopting these amendments, the Commission will receive and evaluate public comments on the proposed amendments and their associated collection of information requirements.

## **9. Payment or Gift**

None.

## **10. Confidentiality**

Responses provided to the Commission pursuant to 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, 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. Estimate of Hour and Cost Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>9</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission that have custody of client assets. All such advisers will be subject to the proposed amendments to rule 204-2. As of September 2022, there were 15,160 advisers registered with the Commission and 8,724 advisers reported to have custody of client assets in Item 9 of Form ADV. Although not all investment advisers would be subject to this rule, we expect that most would be for two reasons: first, the proposed rule would be triggered by most services advisers commonly provide to their clients, such as trading on a discretionary basis; and second, the proposed rule's application to "assets" would apply to a broad array of client investments, not just to funds or securities as under the current rule. We, therefore, estimate that 13,944 which is the number of all registered advisers that currently report having discretionary authority, would be subject to the proposed rule.<sup>10</sup> 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 2,803,536 hours, based on an estimate of 15,160 registered advisers, with a total annual aggregate external cost burden of \$0.<sup>11</sup> The table below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule

---

<sup>9</sup> 44 U.S.C. 3501 *et seq.*

<sup>10</sup> This estimate is based on the 14,204 advisers who answer yes to Form ADV Item 8(C)(1) and have discretionary authority to determine the "securities to be bought or sold for a client's account." For purposes of this estimate, we have excluded 260 advisers answering yes to Form ADV Item 8(C)(1) but reporting that they solely advise investment company clients in response to Form ADV Item 5.D.(1)(d).

<sup>11</sup> Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204-2, OMB Report, OMB 3235-0278 (May 2023).

204-2. We have made certain estimates of the burdens associated with the proposed amendments solely for the purpose of this PRA analysis. The application of the provisions of the proposed rule—and thus the extent to which there are collections of information and their related burdens—would be contingent on a number of factors, such as the types of services the adviser provides, the number of clients to whom it provides those services, and the nature of the relevant assets. Because of the wide diversity of services and relationships offered by investment advisers, we expect that the obligations imposed by the proposed rule would, accordingly, vary substantially among advisers. However, we have made certain estimates of this data solely for the purpose of this PRA analysis.

Table 1: Rule 204-2 PRA Estimates

	Internal Hour Burden		Wage Rate <sup>1</sup>	Internal Time Costs	Annual External Cost Burden
FINAL ESTIMATES FOR RULE 204-2 FOR CLIENT COMMUNICATIONS					
Retention of written client notifications and responses	3	×	\$82 (compliance clerk)	\$246	
Total burden per adviser	3			\$246	
Total number of affected advisers	×	13,944		×	13,944
<b>Sub-total burden</b>	<b>41,832 hours</b>			<b>\$3,430,224</b>	
FINAL ESTIMATES FOR RULE 204-2 FOR CLIENT ACCOUNTS					
Creation and retention of records documenting client account identifying information, including adviser discretionary authority	2	×	\$73 (general clerk)	\$146	
	1	×	\$82 (compliance clerk)	\$82	
Total burden per adviser	3			\$228	
Total number of affected advisers	×	13,944		×	13,944
<b>Sub-total burden</b>	<b>41,832 hours</b>			<b>\$3,179,232</b>	
Creation and retention of records documenting custodian identifying information corresponding to each client account, including copies of qualified custodian agreements with adviser, a record of required reasonable assurances from the qualified custodian, and if applicable, a copy of the adviser's written reasonable determination that ownership of certain specified client assets cannot be recorded and	2	×	\$73 (general clerk)	\$146	
	1	×	\$82 (compliance clerk)	\$82	

	Internal Hour Burden		Wage Rate <sup>1</sup>	Internal Time Costs	Annual External Cost Burden
maintained under a qualified custodian's possession or control					
Total burden per adviser	3			\$228	
Total number of affected advisers	× 13,944			× 13,944	
<b>Sub-total burden</b>	<b>41,832 hours</b>			<b>\$3,179,232</b>	
\$73					
Creation and retention of records documenting adviser's basis of custody of client assets	2	×	(general clerk)	\$146	
	1	x	\$82	\$82	
(compliance clerk)					
Total burden per adviser	3			\$228	
Total number of affected advisers	× 13,944			×13,944	
<b>Sub-total burden</b>	<b>41,832 hours</b>			<b>\$3,179,232</b>	
Retention of copies of account statements	2	x	\$82	\$164	
(compliance clerk)					
Total burden per adviser	2			\$164	
Total number of affected advisers	x 13,944			x 13,944	
<b>Sub-total burden</b>	<b>27,888 hours</b>			<b>\$2,286,816</b>	
Creation and retention of records of detailed transaction and position information for each client account	3	x	\$82	\$246	
(compliance clerk)					
Total burden per adviser	3			\$246	
Total number of advisers	x 13,944			x 13,944	
<b>Sub-total burden</b>	<b>41,832 hours</b>			<b>\$3,430,224</b>	

	Internal Hour Burden		Wage Rate <sup>1</sup>	Internal Time Costs	Annual External Cost Burden
Retention of copies of, and records relating to, standing letters of authorization	.25	x	\$82 (compliance clerk)	\$20.50	
Total burden per adviser	.25			\$20.50	
Total number of advisers	x 2,789			x 2,789	
<b>Sub-total burden</b>	<b>697.25 hours</b>			<b>\$57,174.50</b>	
<b>FINAL ESTIMATES FOR RULE 204-2 FOR INDEPENDENT PUBLIC ACCOUNTANT</b>					
Retention of copies of all audited financial statements, internal control reports, and required written agreements between independent public accountant and adviser or its client	3	x	\$73 (general clerk)	\$219	
	1	x	\$82 (compliance clerk)	\$82	
Total burden per adviser	4			\$301	
Total number of affected advisers	x 13,944			x 13,944	
<b>Sub-total burden</b>	<b>55,776 hours</b>			<b>\$4,197,144</b>	
<b>TOTAL ESTIMATED FINAL BURDEN FOR RULE 204-2</b>					
<b>Total burden for this rulemaking</b>	<b>293,521.25 hours</b>			<b>\$22,939,278.50</b>	
<b>Previously approved burden plus the additional burden due to the increase in the number of advisers</b>	<b>0 hours</b>			<b>\$0</b>	
<b>Total burden</b>	<b>3,347,352 hours</b>			<b>\$217,333,279</b>	

**Notes:**

1. 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 the SIFMA Wage Report.

### **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 proposed amendments to rule 204-2 is \$0.

### **14. Cost to 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 2,803,536 hours, based on an estimate of 15,160 registered advisers, or 184.93 hours per registered adviser, with a total monetized costs of \$179,000,834. We estimate that the proposed amendments to rule 204-2 will result in a revised annual aggregate burden of 3,347,352 hours per year, based on a revised estimate of 15,160 registered advisers, or 220.80 hours per registered adviser, with a monetized internal value of \$217,333,279. This would be an aggregate increase of 543,816 hours, or \$38,332,445 in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates. The changes are due to proposed 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.