

C. Costs

The Commission anticipates that rule 206(4)–6 and the amendments to rule 204–2 will impose certain costs on advisers that have voting authority over client securities.³⁵ Advisers that do not yet have proxy voting policies and procedures in place will incur costs in connection with establishing them. Because the rule does not require specific policies and procedures, but permits the adviser flexibility to craft policies and procedures suitable to its business and conflicts, we believe that the costs will vary significantly from adviser to adviser based on factors such as size, investment philosophy, and clientele. Moreover, a number of very large advisers—likely the firms that would require the most detailed and complex policies and procedures—commented that they already had proxy voting policies and procedures in operation. Advisers that have established policies and procedures may incur only limited costs in revising them to meet the rule's requirements.

Advisers will also incur costs in preparing descriptions of their voting policies and procedures, furnishing the descriptions to clients (and furnishing copies of the policies and procedures upon request), responding to client requests for actual proxy votes, and keeping records as required by the rule amendments.

Although a number of advisers indicated that their cost to comply with the proposed recordkeeping requirements would be significant, they did not provide specific data. Advisers with relatively few staff indicated that they believed that complying with the recordkeeping requirements would require them to hire an additional employee, while large advisers chiefly commented on the requirement to maintain records that were material to the voting decision. We have narrowed the recordkeeping requirements from the proposal to incorporate several recommendations from commenters. Under the rule amendments as adopted, advisers may retrieve proxy statements from the Commission's EDGAR system rather than maintaining copies, and may rely on a third party to make and keep copies of proxy statements and records

of votes. Further, the final rule substantially narrows the requirements for keeping documents material to the adviser's voting decision. We believe that these changes significantly reduce the costs involved.

V. Paperwork Reduction Act

As set forth in the Proposing Release, new rule 206(4)–6 and the amendments to rule 204–2 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").³⁶ The titles for the collections of information are "Proxy Voting by Investment Advisers" and "Books and Records to be Maintained by Investment Advisers." The Commission submitted the new collection of information, Proxy Voting by Investment Advisers, to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection for information for rule 206(4)–6 has been approved by OMB; and OMB control number is 3235–0571 (expires November 30, 2005). The collection of information for rule 204–2 was previously approved under OMB control number 3235–0278 (expires November 30, 2005). 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 control number.

A. Rule 206(4)–6

Under rule 206(4)–6, an investment adviser that exercises voting authority over clients' securities must adopt written proxy voting policies and procedures, describe the procedures to clients, make them available to clients upon request, and inform clients how they can obtain information about how their securities were voted. We requested comment on the recordkeeping burden of rule 206(4)–6, but received no responses.

In the Proposing Release, we estimated that, on average, an adviser would spend 10 hours annually documenting its proxy voting policies and procedures.³⁷ For purposes of estimating the number of advisers that would be affected by the new rule, we assumed that all advisers with discretion to manage clients' assets also had discretion to vote clients' securities

and would thus be subject to the rule.³⁸ We received no comments on this assumption. According to our records, 6,203 of the 7,687 total advisers registered with the Commission manage client assets on a discretionary basis.³⁹ We therefore estimated advisers' total burden for establishing proxy voting policies and procedures to be 62,030 hours.⁴⁰

The rule also requires these advisers to describe their proxy voting policies and procedures to clients. The attendant paperwork burden is already incorporated in a collection of information titled "Form ADV," which is currently approved by OMB under control number 3235–0049.⁴¹ In addition, the rule also requires these investment advisers to provide copies of their proxy voting policies and procedures to clients upon request. According to our records, SEC-registered advisers have, on average, 670 clients each; we had estimated that, on average, at least 90 percent of each of these adviser's clients would find the adviser's description of its proxy voting policies sufficiently informative, and ten percent at most (or 67 clients of each adviser on average), would request copies of the full policies and procedures.⁴² We had also estimated that it would take an adviser 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 41,560 hours.⁴³ Advisers

³⁸ This estimate potentially overstates the number of advisers that would be subject to the rule. Part 1A of ADV does not require investment advisers to describe whether they vote proxies on behalf of clients. Nor does Part 1A require advisers to describe whether the securities they manage are voting securities as opposed to, for example, government or other debt obligations for which proxy voting issues do not arise.

³⁹ Based on our records of information submitted to us by investment advisers on Part 1A of Form ADV, 6,203 SEC-registered investment advisers report that they provide continuous and regular supervisory or management services for client securities portfolios on a discretionary basis.

⁴⁰ $6,203 \times 10 = 62,030$.

⁴¹ In April of 2000, we proposed amendments to Part 2 of Form ADV that would require investment advisers that vote client proxies to describe their proxy voting policies and procedures in their brochure. *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Investment Advisers Act Release No. 1862 (April 5, 2000) [65 FR 20524 (April 17, 2000)]. An adviser could satisfy the disclosure requirements under new rule 206(4)–6(b) and (c) by describing its policies and procedures in its brochure. See *supra* note 26. In connection with our April 2000 proposal, when we obtained OMB approval for our amendments to the Form ADV collection that would result from the proposed changes to Part 2, we included the paperwork burden of describing any proxy voting policies and procedures in a firm's brochure.

⁴² $670 \times 10\% = 67$.

⁴³ $0.1 \times 67 \times 6,203 = 41,560$. In connection with submitting this collection of information to OMB, the Commission has also prepared an estimate of

³⁵ In connection with estimating the annual aggregate burden of the proposed rule and amendments for purposes of the Paperwork Reduction Act, the Commission staff has estimated that advisory firms subject to the rule will incur staff salary and benefit costs aggregating approximately \$5,775,000 to prepare and maintain the documents and records required under the proposal. This is an aggregate estimate, and each firm's individual costs in this regard will vary depending on the nature of the firm's advisory business and clients. See Proposing Release at n. 45.

³⁶ 44 U.S.C. 3501 to 3520.

³⁷ In preparing this estimate, we have taken into account the fact that many advisers subject to ERISA (because they manage plan assets) already have proxy voting procedures in place that can serve as the basis of the adviser's procedures under the new rule.