

commented that very few clients currently request copies of proxy voting policies and procedures. We are not changing our original estimates at this time, because advisers may experience an increase in client requests as a result of the disclosure required under the rule.

We are adopting rule 206(4)–6 as proposed. Accordingly, the estimated annual aggregate burden of collection for rule 206(4)–6 remains 103,590 hours.<sup>44</sup> This collection of information is mandatory, and responses to the disclosure requirements are not kept confidential.

#### B. Rule 204–2

Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records by investment advisers. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.<sup>45</sup> The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.<sup>46</sup>

As amended, rule 204–2 requires registered investment advisers that vote client proxies to maintain specified records with respect to those clients. The records must be maintained in the manner, and for the period of time, as other books and records under rule 204–2(c). Advisers subject to rule 206(4)–6, Proxy Voting by Investment Advisers, must maintain copies of their proxy voting policies and procedures, as well as copies or records of each proxy statement received with respect to the securities of clients for whom the adviser exercises voting authority. These advisers must also maintain a record of each vote cast, as well as certain records pertaining to the

adviser's decision on the vote. In addition, the adviser must maintain a record of each written client request for proxy voting information, and all written responses by the investment adviser to written or oral client requests for proxy voting information.

We received numerous comments on how to minimize the burden of this collection of information. In response to these comments, we have substantially modified the rule amendments. Under the adopted amendments to rule 204–2, advisers may use a third party service provider to maintain proxy statements and proxy votes if the service provider undertakes to provide copies of those records promptly on request. Many advisers, particularly advisers that vote proxies on hundreds or thousands of companies, already retain a proxy voting service that they may be able to rely on under the amendments as adopted. In addition, advisers may rely on the Commission's EDGAR system to meet the requirement that they maintain proxy statements. We have also amended the requirement that advisers maintain client requests for proxy voting information, and the advisers' responses, by requiring only the retention of written client requests and of advisers' written responses to any client request, whether oral or in writing.<sup>47</sup> Finally, we narrowed the requirement that an adviser maintain records of documents material to the adviser's decision on how to vote. The revised rule requires advisers to maintain only documents that they created that were material to making the voting decision.<sup>48</sup>

In the Proposing Release, we estimated that the proposed amendments would increase the average annual collection burden of an adviser subject to the amendments by 20 hours, to 215.34 hours.<sup>49</sup> Based on the comments we received, we continue to estimate that the annual collection burden will increase 20 hours per adviser, on average. Many commenters indicated that the recordkeeping burdens as proposed were significant, which we interpreted to mean in excess of our original estimate of 20 hours. However, we believe 20 hours is an

accurate estimate of the burden, in light of the changes we have made to the final version of the recordkeeping amendments. As discussed above in connection with proposed rule 206(4)–6, we estimate that 6,203 advisers exercise voting authority on behalf of clients and will thus be subject to this additional burden, for an annual aggregate burden increase of 124,060.<sup>50</sup> The average annual burden for SEC-registered investment advisers under rule 204–2 would accordingly increase from 195.34 hours to 211.48 hours.<sup>51</sup>

#### VI. Summary of Final Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis ("IRFA") was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), in accordance with 5 U.S.C. 604, regarding rule 206(4)–6 and amendments to rule 204–2. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule and rule amendments that require certain advisers to adopt proxy voting policies and procedures and maintain certain proxy voting records. The rule is designed to ensure that advisers vote clients' securities in the clients' best interest, and that the adviser addresses how it resolves material conflicts of interest.

The FRFA also discusses the effect of the rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is considered a small entity if it: (i) Has assets under management having a total value of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had \$5 million or more on the last

the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipate that investment advisers would likely use compliance professionals to document their firms' proxy voting policies and procedures. We estimate the hourly wage for compliance professionals to be \$60, including benefits. We anticipate that investment advisers would likely use clerical staff to deliver copies of proxy voting policies in response to clients' requests. We estimate the hourly wage for clerical staff to be \$10, including benefits. Accordingly, we estimate the annual aggregate cost of collection to be \$4,137,400 ((62,030 hours × \$60 per hour) + (41,560 hours × \$10 per hour) = \$4,137,400).

<sup>44</sup> 62,030 × 41,560 = 103,590.

<sup>45</sup> See section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

<sup>46</sup> See rule 204–2(e).

<sup>47</sup> "Written" policies and procedures would, of course, include documents in electronic format. See *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery Of Information*, Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24643 (May 15, 1996)].

<sup>48</sup> The proposed amendments would have required a record of all oral and a copy of all written communications received and memoranda or similar documents created by the adviser that were material to making a decision on voting client securities.

<sup>49</sup> 195.34 + 20 = 215.34.

<sup>50</sup> 20 × 6,203 = 124,060. In connection with submitting this collection of information to OMB, the Commission also prepared an estimate of the aggregate annual cost to affected firms of this annual aggregate hour burden. We anticipated that investment advisers would likely use compliance clerical staff to maintain the records required under the proposed amendments. We estimated the hourly wage for compliance clerical staff to be \$13.20, including benefits. Accordingly, we estimated the annual aggregate cost of collection to be \$1,637,592 (124,060 hours × \$13.20 per hour = \$1,637,592).

<sup>51</sup> (1,501,578.5 current hours + 124,060 additional hours = 1,625,638.5 aggregate burden hours) / 7,687 SEC-registered investment advisers = 211.48.