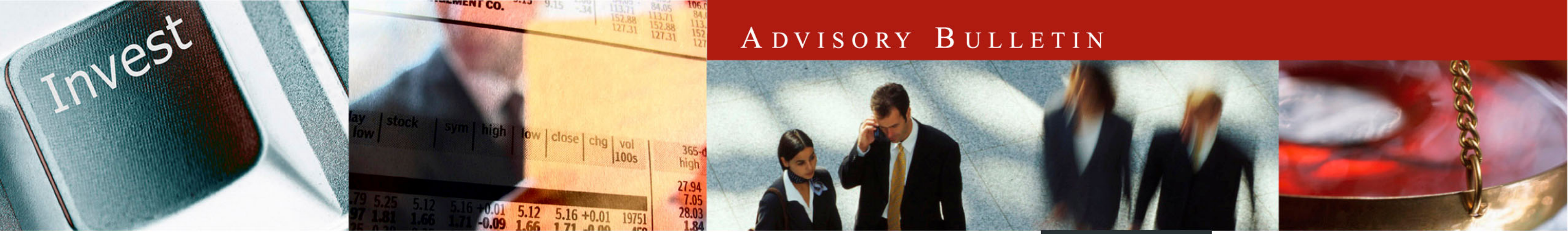

THOMPSON HINE

December 2010

INVESTMENT MANAGEMENT UPDATE

SEC Proposes New Rules and Form ADV Amendments Implementing the Investment Advisers Act of 1940 Provision of the Dodd-Frank Act

On November 19, the Securities and Exchange Commission (SEC) proposed new rules and rule amendments under the Investment Advisers Act of 1940 ("Advisers Act") to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protections Act ("Dodd-Frank Act").[1] The proposals address Title IV of the Dodd-Frank Act, which revises the threshold for investment adviser registration with the SEC, requires registration by certain advisers to private funds and mandates reporting by certain investment advisers that are exempt from registration. Among other things, the proposals focus on:

- Eligibility for registration with the SEC, including the mechanics for transitioning to state registration for those advisers that no longer qualify for SEC registration and new rules for pension consultants and multi-state advisers. (Click here for details.)
- Reporting requirements for venture capital funds and other exempt advisers. (Click here for details.)
- Amendments to Form ADV designed to provide the SEC and clients with additional information about an adviser's operations. (Click here for details.)
- Amendments to the recently adopted Pay-to-Play rules. (Click here for details.)

Comments on the proposed rules and rule amendments are due on January 24, 2011.

SEC and State Registration

Section 203A of the Advisers Act generally prohibits an investment adviser regulated by the state in which it maintains its principal office and place of business from registering with the SEC unless it has at least $25 million of assets under management. Section 410 of the Dodd-Frank Act creates a new group of mid-sized advisers and shifts primary responsibility for their regulatory oversight to state securities authorities. It does this by prohibiting any investment adviser that is registered as an investment adviser in the state in which it maintains its principal office and place of business and that has assets under management of between $25 million and $100 million from registering with the SEC.[2]

The SEC estimates that approximately 4,100 SEC-registered advisers will be required to withdraw their registrations and register with one or more state securities authorities. The SEC is proposing rules and rule amendments that would provide a means of identifying advisers that must transition to state regulation and clarifying the application of the new statutory provisions.

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Transition to State Registration

The SEC is proposing new Rule 203A-5 to govern the transition to state registration for those investment advisers that no longer qualify to register with the SEC. Proposed Rule 203A-5 provides the following timeline for the transition to state registration:

- *August 20, 2011*. Every investment adviser registered with the SEC on July 21, 2011(the effective date of Title IV of the Dodd-Frank Act) will be required to file an amendment to its Form ADV no later than August 20, 2011 and to report the market value of its assets under management determined within 30 days of the filing. Based on that valuation, each investment adviser will be required to determine whether it meets the revised eligibility criteria for SEC registration.
- *October 19, 2011*. An adviser registered with the SEC on July 21, 2011 that is prohibited from registering with the SEC under Section 203A(a)(2) and that is not otherwise exempted by Rule 203A-2 from the prohibition, must withdraw from registration with the SEC by filing Form ADV-W by October 19, 2011.[3]

The filing required by proposed Rule 203A-5 is designed to provide the SEC and state regulatory authorities with information necessary to identify those advisers required to transition to state registration and to understand the reason for the transition or basis for continued SEC registration. The SEC expects to cancel the registration of advisers that fail to file an amendment or withdraw their registrations in accordance with the proposed rule.[4]

To avoid the burden on advisers with assets under management of between $30 million and $100 million from registering with the SEC only to have to withdraw when Section 410 of the Dodd-Frank Act is implemented, the SEC states in the Proposing Release that it will not object if any state-registered or newly registering adviser does not register with the SEC if, on or after January 1, 2011 until the end of the transition process (which would be October 19, 2011 under proposed Rule 203A-5), the adviser reports on its Form ADV that it has between $30 million and $100 million of assets under management. To take advantage of this exception, however, an adviser must register as an investment adviser in the state in which it maintains its principal office and place of business, and it must have a reasonable belief that it is required to be registered with, and is subject to examination as an investment adviser by, that state.

Switching Between State and SEC Registration

Rule 203A-1 currently provides for a $5 million "buffer," permitting an investment adviser having between $25 million and $30 million of assets under management to remain registered with the state or to register with the SEC and does not subject the adviser to cancellation of its SEC registration until its assets under management fall below $25 million. The SEC proposes amending Rule 203A-1 to eliminate the $5 million buffer.

However, to mitigate against frequent switching between SEC and state registration, the proposed amendments continue to permit an adviser to rely on the firm's assets under management as reported in the adviser's annual updating amendments for purposes of determining its eligibility to register with the SEC. Thus, an adviser can continue to avoid the need to change its registration status based upon fluctuations that occur mid-year. In addition, if an adviser is no longer eligible for SEC registration, the rule continues to provide a 180-day grace period measured from the adviser's fiscal year end to allow it to switch to state registration.[5]

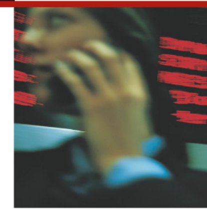
Determining Assets Under Management

Section 203A(a)(2) of the Advisers Act defines "assets under management" as the "securities portfolios" for which an adviser provides "continuous and regular supervisory or management services." Current instructions to Form ADV suggest that advisers may exclude certain assets, such as proprietary assets, assets an adviser manages without receiving compensation and assets of foreign clients, when calculating assets under management. The SEC proposes amending the instructions to Form ADV to require advisers to include in their "regulatory assets under management" securities portfolios for which they provide continuous and regular supervisory or management services, regardless of whether these assets are proprietary assets, assets managed without receiving compensation or assets of foreign clients. In addition, the proposal would not allow an adviser to subtract outstanding indebtedness and other accrued but unpaid liabilities, which remain in a client's account and are managed by the adviser. Finally, the proposal would provide guidance regarding how advisers to private funds should determine assets under management, including the use of fair valuation and the inclusion of any uncalled capital commitments made to the private fund.

The SEC also proposes to amend Rule 203A-3 to require that the calculation of "assets under management" for purposes of Section 203A be the calculation of the securities portfolios for which an investment adviser provides continuous and regular supervisory or management services, as reported on the investment adviser's Form ADV. Finally, the SEC proposes amending the terminology used in Part 1A of Form ADV to refer to an adviser's "regulatory assets under management" in order to acknowledge the distinction from the amount of assets under management the adviser discloses to clients in Part 2 of Form ADV, which need not necessarily meet the requirements of Section 203A.

Mid-Sized Advisers

The Dodd-Frank Act amends Section 203A(a)(2) of the Advisers Act to prohibit SEC registration of mid-sized advisers, but only if the adviser is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the state in which it maintains its principal office and place of business; and, if registered, the adviser would be subject to examination as an investment adviser by such commissioner, agency or office. The Dodd-Frank Act, however, does not explain how to determine whether a mid-sized adviser is "required to be registered" or is "subject to examination" by a particular state securities authority.



To address this lack of definition, the SEC is proposing changes to Form ADV to require a mid-sized adviser filing with the SEC to affirm, upon application and annually thereafter, that it is not required to be registered as an adviser with the state securities authority in the state where it maintains its principal office and place of business.[6] The SEC also will inquire with each state securities commissioner whether an investment adviser registered in the state would be subject to examination as an investment adviser by that state's securities commissioner (or agency or office with similar authority). The SEC will then identify for advisers filing through the Investment Adviser Registration Depository (IARD) the states in which the securities commissioner did not certify that advisers are subject to examination and incorporate that list into IARD to ensure that only mid-sized advisers with their principal office and place of business in one of those states (or mid-sized advisers that are not registered with the states where they maintain their principal office and place of business) register with the SEC.

Exemption to Prohibition on SEC Registration

Section 203A(c) of the Advisers Act permits the SEC to exempt advisers from the prohibition on SEC registration. The SEC has permitted six types of investment advisers to register with it under Rule 203A-2. While the Dodd-Frank Act did not change Section 203A(c), the SEC is proposing rules and rule amendments that would modify three of the exemptions affected by the Dodd-Frank Act.

- *NRSROs*. The SEC proposes eliminating the exemption applicable to nationally recognized statistical rating organizations (NRSROs) found in Rule 203A-2(a). The SEC notes that only one NRSRO currently is registered under the Advisers Act. That NRSRO has assets under management in excess of $100 million and, thus, would not need or rely on the exemption.
- *Pension consultants*. Rule 203A-2(b) currently exempts from the prohibition on SEC registration pension consultants with respect to assets of plans having an aggregate value of at least $50 million. The SEC proposes amending Rule 203A-2(b) to increase the minimum value of plan assets to $200 million.[7]
- *Multi-state advisers*. Current Rule 203A-2(e) exempts from the prohibition on SEC registration investment advisers of any size that are required to register in 30 or more states and permits such advisers to remain registered with the SEC as long as they are required to register in at least 25 states. Section 410 of the Dodd-Frank Act amends Section 203A to provide that a mid-sized adviser that otherwise would be prohibited from registering with the SEC may nevertheless register with the SEC if it would be required to register with 15 or more states. Amended Section 203A(a)(2), however, does not include an exemption from the prohibition on SEC registration for small advisers (i.e., those with assets under management of less than $25 million), similar to the exemption in current Rule 203A-2(e). Therefore, the SEC proposes amending Rule 203A-2(e) to permit all investment advisers required to register as an investment adviser with 15 or more states to register with the SEC. Under the proposal, investment advisers falling below 15 states must withdraw from SEC registration and register with the appropriate state securities authorities.

Elimination of the Safe Harbor in Rule 203A-4

The SEC proposes eliminating Rule 203A-4, which provides a safe harbor from SEC registration to any investment adviser that is registered with the state securities authority of the state in which it has its principal office and place of business based on a reasonable belief that it has insufficient assets under management to qualify for registration with the SEC. The Proposing Release states that the safe harbor has not been used and that is unlikely that an adviser would be reasonably unaware that it has more than $100 million in regulatory assets under management when it is required to report its regulatory assets under management on Form ADV.

Amendments to Form ADV

Item 2 of Part 1A of Form ADV requires each investment adviser applying for registration to indicate its basis for registration with the SEC and to report annually whether it is eligible to remain registered. The SEC proposes amending Item 2 to reflect the new statutory threshold for SEC registration as result of the Dodd-Frank Act and proposed revisions to related rules. Amended Item 2 would require each SEC-registered adviser (and each applicant for registration) to identify whether under Section 203A, as amended, it is eligible to register with the SEC because it:

- Is a large adviser (having $100 million or more of regulatory assets under management);
- Is a mid-sized adviser that does not meet the criteria for state registration and examination;
- Has its principal office and place of business in Wyoming (which does not regulate advisers) or outside the United States;
- Meets the requirements for one or more of the exemptive rules under Section 203A of the Advisers Act;
- Is an adviser (or sub-adviser) to a registered investment company;
- Is an adviser to a business development company and has at least $25 million of regulatory assets under management; or
- Has some other basis for registering with the SEC.

The SEC also expects to modify IARD to prevent an applicant from registering with, and an adviser from continuing to be registered with, the SEC unless it represents that it meets the eligibility criteria set forth in the Advisers Act and the rules thereunder.

EXEMPT REPORTING ADVISERS

Section 403 of the Dodd-Frank Act repeals the "private adviser exemption" in Section 203(b)(3) of the Advisers Act.[8] Advisers to hedge funds, private equity funds, venture capital funds and other pooled investment vehicles rely on Section 203(b)(3) to avoid registering with the SEC under the

Advisers Act. In place of the broad exemption from registration provided by Section 203(b)(3), the Dodd-Frank Act substitutes narrower exemptions for any adviser that acts solely as an adviser to one or more venture capital funds (new Section 203(l)) and any adviser that acts solely as an adviser to private funds and has assets under management in the United States of less than $150 million (new Section 203(m)) (collectively, "Exempt Reporting Advisers").[9] The Dodd-Frank Act empowers the SEC to require such advisers to maintain certain records and submit such reports as the SEC determines necessary. To implement the reporting requirements in new Sections 203(l) and 203(m) of the Advisers Act, the SEC is proposing to amend Form ADV so that it can serve as both a reporting form and a registration form and to require Exempt Reporting Advisers to submit and periodically update reports by completing a limited number of items on Form ADV.

Proposed Rule 204-4

Proposed Rule 204-4 under the Advisers Act would require Exempt Reporting Advisers to file reports with the SEC on Form ADV through IARD using the same process used by registered investment advisers.[10] The reports would be available for public viewing on the SEC's website. Because Form ADV is used by advisers to register with both the SEC and state securities authorities, the SEC anticipates adding a check box and instructions to the form that would permit Exempt Reporting Advisers to direct the filing of reports filed with the SEC to state securities authorities.[11]

The SEC is proposing the following amendments to Form ADV to facilitate filings by Exempt Reporting Advisers:

- Re-title the form to reflect its dual purpose as both the "Uniform Application for Investment Adviser Registration" and the "Report by Exempt Reporting Advisers";
- Amend the cover page so that Exempt Reporting Advisers would indicate the type of report they are filing; and
- Amend Item 2 of Part 1A, which requires advisers to indicate their eligibility for SEC registration, by adding a new subsection C that would require an Exempt Reporting Adviser to identify the exemption(s) that it is relying on to report to, rather than register with, the SEC.

Information in Reports

An Exempt Reporting Adviser would be required to complete a limited subset of Form ADV items, which would provide the SEC and the public with some basic information about the adviser and its business. The proposal would require an Exempt Reporting Adviser to complete the following items in Part 1A of Form ADV:

- Item 1 (Identifying Information)
- Item 2.C. (SEC Reporting by Exempt Reporting Advisers)

- Item 3 (Form of Organization)
- Item 6 (Other Business Activities)
- Item 7 (Financial Industry Affiliations and Private Fund Reporting)
- Item 10 (Control Persons)
- Item 11 (Disclosure Information).
- Schedules A, B, C and D.

Exempt Reporting Advisers would not be required to complete and file with the SEC other items in Part 1A or prepare and deliver a client brochure. Proposed Rule 204-4 also would require an Exempt Reporting Adviser to file a final report on Form ADV when it ceases to be an Exempt Reporting Adviser, when it no longer qualifies as an Exempt Reporting Adviser or when it applies for registration with the SEC.[12]

Updating Requirements

The SEC proposes amending Rule 204-1 under the Advisers Act to require Exempt Reporting Advisers to file updating amendments to reports filed on Form ADV. Proposed Rule 204-1(a) would require an Exempt Reporting Adviser to amend its reports on Form ADV:

- Annually within 90 days of the end of the adviser's fiscal year; and
- More frequently, if required by the instructions to Form ADV.

The SEC proposes amending General Instruction 4 to Form ADV to require an Exempt Reporting Adviser to update Items 1 (Identification Information), 3 (Form of Organization) or 11 (Disciplinary Information) promptly if they become inaccurate in any way, and to update Item 10 (Control Persons) if it becomes materially inaccurate. These are the same updating requirements as are applicable to registered advisers, but with respect to fewer items.

Transition

Each Exempt Reporting Adviser would be required to file its initial report on Form ADV no later than August 20, 2011, 30 days after the July 21, 2011 effective date of the Dodd-Frank Act. The SEC reports that it is working closely with the Financial Industry Regulatory Authority (FINRA) to make the needed modifications to the IARD system. It acknowledges, however, that the programming may not be completed by August 30, 2011. If that occurs, the SEC may delay the reporting deadline until the system can accept electronic filing of the revised form.

AMENDMENTS TO FORM ADV

The SEC also is proposing that investment advisers be required to provide additional information on Form ADV about their operations in order to permit the SEC to provide more effective oversight. The additional operational information will focus on:

- Information regarding private funds managed by the adviser;
- Data about the adviser's advisory business and business practices that may present significant conflicts of interest; and
- Information about the adviser's non-advisory activities and financial industry affiliations.

In addition, the SEC is proposing changes to Part 1 of Form ADV that will allow it to better assess compliance risks and identify advisers that are subject to the Dodd-Frank Act's requirements concerning certain incentive-based compensation arrangements.[13]

Item 1: Reporting $1 Billion in Assets

Section 956 of the Dodd-Frank Act requires the SEC to adopt rules or guidelines addressing certain excessive incentive-based compensation arrangements, including those of investment advisers with $1 billion or more in assets. To identify those advisers that would be subject to Section 956, the SEC proposes amending Item 1 to require each adviser to indicate whether it had $1 billion or more in assets as of the last day of the adviser's most recent fiscal year. For purposes of this reporting requirement, the amount of assets would be the adviser's total assets determined in the same manner as the amount of "total assets" is determined on the adviser's balance sheet for its most recent fiscal year end. Both registered and Exempt Reporting Advisers would complete this item.

Item 1 also would be amended to require an adviser to provide contact information for its chief compliance officer and to disclose whether it or any of its control persons is a public reporting company under the Securities Exchange Act. Finally, Item 1 would be amended to give advisers the option of picking "limited partnership" as a form of organization.

Item 5: Advisory Business Information

Item 5 of Part 1A requires an adviser to provide basic information regarding its business, the types of services it provides and the types of clients it services. To help it better understand the operations of advisers and identify candidates for risk-targeted examinations, the SEC is proposing that registered advisers be required to:

- Disclose the number of employees that are registered as investment adviser representatives or insurance agents;

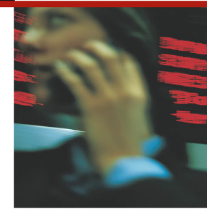
- Provide a single numerical approximate in response to the questions about employees instead of checking a box corresponding to a range of numbers, as is currently required;
- Disclose, in addition to the number and type of clients (e.g., high-net-worth individuals, investment companies, etc.), whether the adviser's clients include business development companies, insurance companies and other investment advisers;
- Distinguish pension and profit-sharing plans subject to ERISA from those that are not;
- Indicate the approximate amount of its regulatory assets under management attributable to each client type;
- Disclose the approximate percentage of the adviser's clients that are not United States persons;
- Disclose in response to Item 5.G. whether the adviser provides portfolio management for pooled investment vehicles, other than registered investment companies, and whether it provides educational seminars or workshops;
- Require an adviser to provide the SEC file number for a registered investment company if they provide portfolio management for an investment company;[14] and
- Require advisers to select from a list the types of investments about which they provided advice during the fiscal year for which they are reporting.

These changes would apply only to SEC-registered advisers.

Items 6 and 7: Other Business Activities and Financial Industry Affiliations

Items 6 and 7 of Part 1A require advisers to report those financial services in which the adviser or a related person is actively engaged. Both registered and Exempt Reporting Advisers would complete this item. The SEC proposes the following changes to these items so that it can better assess the conflicts of interest and risks that may be created by those relationships and identify affiliated financial service businesses:

- Expand the lists in both Items 6 and 7 to include business as a trust company, registered municipal adviser, registered security-based swap dealer and major security-based swap participant;
- Add accountants (or accounting firms) and lawyers (or law firms) to the list in Item 6;
- Clarify in the instructions to Item 7 that advisers are to include related persons that are foreign affiliates;
- Add new Section 6.A. to Schedule D that would require advisers that are engaged in other businesses under different names to list those other business names and the other lines of business in which the adviser engages using those names;



- Modify Item 6.B. to require advisers primarily engaged in another business under a different name to also provide that name in Section 6.B. of Schedule D.
- Amend Section 7.A. of Schedule D to require that advisers provide identifying information for any type of related persons (not just those that are investment advisers or broker-dealers as currently required);
- Expand the information collected on related persons to include more details about the relationship between the adviser and the related person, whether the related person is registered with a foreign financial regulatory authority and how they share personnel and confidential information; and
- Require the adviser to report whether a bank or futures commission merchant that is a related person is a qualified custodian for client assets under the adviser custody rule, and, if the adviser is reporting an investment adviser that is a related person, whether the related person is exempt from registration.

Item 7.B.: Private Fund Reporting

The SEC proposes revising Item 7.B. of Part 1 of Form ADV to expand the information advisers provide about the private funds they advise. Both registered and Exempt Reporting Advisers would complete this item. The SEC proposes the following:

- Modify the scope of Item 7 by requiring completion of Section 7.B. of Schedule D only for a private fund that the adviser (and not a related person) advises. The term "private fund," defined in Section 202(a)(29) of the Advisers Act, also would replace the term "investment-related limited partnership," thus requiring advisers to report pooled investment vehicles regardless of whether they are organized as limited partnerships.
- Eliminate the requirement that an adviser report funds that are advised by affiliates. Those funds would be reported directly to the SEC by the affiliate, which would either be registered under the Advisers Act or treated as an Exempt Reporting Adviser.
- Permit a sub-adviser to exclude private funds for which an adviser is reporting on another Schedule D. This will prevent multiple reporting of each private fund and permit an adviser sponsoring a master-feeder arrangement to submit a single Schedule D for the master fund and all the feeder funds.
- Permit an adviser with a principal office and place of business outside the United States to omit a Schedule D for a private fund that is not organized in the United States and that is not offered to, or owned by, "United States persons." The term "United States persons" would be defined in the ADV Glossary and would be substantially similar to the definition used in Regulation S.
- Expand the indentifying information required in Section 7.B. of Schedule D to require that the adviser disclose:

- The name of the private fund;[15]
- The state or country where the private fund is organized;
- The name of the general partner, directors, trustees or persons occupying similar positions;
- Information about the organization of the fund, including whether it is a master-feeder fund;
- Information about the regulatory status of the fund and its adviser, including regulatory exemptions relied upon by the fund and adviser;
- Whether the adviser is a sub-adviser to the fund and identification by name and SEC registration number of any other advisers to the fund;
- The size of the fund, including both gross and net assets;
- The investment strategy employed by the fund;
- A breakdown of assets and liabilities held by the fund by class and categorization in the fair value hierarchy established under GAAP;
- The number and type of investors in the fund and the minimum investment requirements;
- Characteristics of the fund that may present the fund manager with conflicts of interest with fund investors of the sort that may implicate the adviser's fiduciary obligations to the fund and, in some cases, create risks for the fund investors; and
- The service providers to the fund, including among other things, identity, location and relationship to the adviser.

This information would be publicly available on the SEC's website.

Item 8: Participation in Client Transactions

Item 8 of Part 1.A. requires an adviser to disclose information about transactions with clients. The SEC proposes the following changes to Item 8 that are designed to help the SEC identify additional conflicts of interest that advisers may face:

- If an adviser has discretionary authority to determine the brokers or dealers for client transactions and if it recommends brokers or dealers to clients, it must disclose whether those brokers or dealers are related persons of the adviser;
- An adviser that indicates that it receives "soft dollar benefits" would be required to report whether all those benefits qualify for the safe harbor under Section 28(e) of the Exchange Act for eligible research or brokerage services; and
- An adviser would be required to indicate whether it or its related person receives direct or indirect compensation for client referrals. This requirement complements the existing requirement that an adviser disclose whether it compensates any person for client referrals.

Item 9: Custody

The SEC is proposing to amend Item 9 to require that advisers indicate the total number of persons that act as qualified custodians for client assets. Recent amendments to Item 9 require advisers to disclose whether they or a related person act as a qualified custodian, but do not require disclosure of information about other qualified custodians.

Amendments to Pay-to-Play Rule

The SEC is proposing the following amendments to Rule 206(4)-5 that are necessitated by the enactment of the Dodd-Frank Act:

- Amend the scope of Rule 206(4)-5 so that it applies to Exempt Reporting Advisers and foreign private advisers. Rule 206(4)-5 currently applies to advisers that are registered with the SEC or exempt from registration in reliance on Rule 203(b)(3). Because the Dodd-Frank Act repeals the “private adviser exemption” in Section 203(b)(3) of the Advisers Act, some Exempt Reporting Advisers previously covered by the rule would, absent the proposed amendment, no longer be subject to it.
- Amend Rule 206(4)-5(a)(2)(i) to provide that advisers may only pay regulated municipal advisers registered under Section 15B of the Securities Exchange Act and subject to pay-to-play rules adopted by the Municipal Securities Rulemaking Board to soliciting government entities. Current Rule 206(4)-5 permits the use of “regulated persons,” which include registered investment advisers and broker-dealers.
- Amend the definition of a “covered associate” of an investment adviser to clarify that a legal entity that is a general partner or managing member of an investment adviser can meet the definition.

For More Information

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[1] *Rules Implementing Amendments to the Investment Advisers Act of 1940*, (Release No. IA-3110) (November 19, 2010) (the "Proposing Release").

[2] However, unlike a small adviser, a mid-sized adviser is not prohibited from registering with the SEC if the adviser is not required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the state in which it maintains its principal office and place of business; the adviser, if registered with the state, would not be subject to examination as an investment adviser by that securities commissioner; or the adviser is required to register in 15 or more states.

[3] While an investment adviser is registered with both the SEC and one or more state securities authorities, both the Advisers Act and applicable state law will apply to the adviser's activities. See proposed Rule 203A-5(b).

[4] Proposed Rule 203A-5(c) would permit the SEC to postpone the effectiveness of, and impose additional terms and conditions on, an adviser's withdrawal from SEC registration, if it instituted certain proceedings under Section 203(e) or (h) of the Advisers Act before the adviser filed Form ADV-W.

[5] If during the 180-day grace period to switch to state registration an adviser's assets under management increase, making the adviser eligible for SEC registration again, the adviser could amend its Form ADV to indicate the new amount of assets under management and continue to remain registered with the SEC.

[6] An adviser reporting that it is no longer able to make such an affirmation thereafter would have 180 days from its fiscal year end to withdraw from SEC registration.

[7] This threshold would maintain the ratio to the statutory threshold for SEC registration ($100 million) that is the same as the ratio of the $50 million plan asset threshold and the $25 million assets under management in place prior to the Dodd-Frank Act.

[8] Section 203(b)(3) exempts from registration any investment adviser who during the course of the preceding 12 months has had fewer than 15 clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act, or a company that has elected to be a business development company pursuant to Section 54 of the Investment Company Act.

[9] Amended Section 203(b)(3) as now applicable only to foreign private advisers.

[10] Each Form ADV would be considered filed with the SEC upon acceptance by the IARD and advisers filing the form would be required to pay a filing fee. The SEC expects the filing fee to be the same as for registered investment advisers.

[11] The Proposing Release states that it understands that the North American Securities Administrators Association, Inc. (NASAA) may propose a model rule that would exempt certain Exempt Reporting Advisers from state registration but would require these advisers to submit to the states a report identical to the report an Exempt Reporting Adviser would be required to submit to the SEC.

[12] The SEC proposes amending the instructions to Form ADV to provide guidance to Exempt Reporting Advisers who file final reports because they must register with the SEC. Under the proposal, a transitioning adviser would file an amendment to its Form ADV simultaneously indicating that the filing will be its final "report" on Form ADV and applying for registration with the SEC.

[13] *See* Section 956 of the Dodd-Frank Act.

[14] This would allow SEC examiners to link information reported on Form ADV to information reported on forms filed through the EDGAR system by investment companies managed by these advisers.

[15] An adviser that uses a code in its records to preserve the anonymity of a private fund client can use the same code to identify the private fund in Schedule D.