

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collections of information on investment advisers, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Investment advisers, Counter money laundering, Counter-terrorism, Currency, Reporting and recordkeeping requirements, Securities.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 321, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart E, revise § 103.56(b)(6) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities; investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 *et seq.*); and investment advisers as that term is defined in § 103.150(a) of this part;

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3. In subpart I, add new § 103.150 to read as follows:

§ 103.150 Anti-money laundering programs for investment advisers.

(a) *Definition.* For purposes of this section, the term *investment adviser* means a person whose principal office and place of business is located in the United States that:

(1) Is registered or required to be registered with the Securities and Exchange Commission (SEC) under section 203(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) and reports or is required to report in Part 1A of SEC Form ADV (*see* 17 CFR 279.1) that it has assets under management; or

(2) Is exempt from registration with the SEC pursuant to section 203(b)(3) of

the Investment Advisers Act (15 U.S.C. 80b–3(b)(3)) and that would be required, if it were registered with the SEC, to report in Part 1A of SEC Form ADV that it has \$30 million or more of assets under management, unless such person is otherwise required to have an anti-money laundering program pursuant to another provision of this subpart, and is subject to examination by a Federal functional regulator.

(b) *Anti-money laundering program required.* Effective [the date that is 90 days after the date of publication of the final rule in the **Federal Register**]:

(1) Each investment adviser shall develop and implement a written anti-money laundering program reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) (BSA) and this part. The investment adviser may exclude from its anti-money laundering program any pooled investment vehicle it advises that is subject to an anti-money laundering program requirement under another provision of this subpart.

(2) Each investment adviser's anti-money laundering program must be approved in writing by its board of directors or trustees, or if it does not have one, by its sole proprietor, general partner, or other persons who have similar functions. An investment adviser shall make its anti-money laundering program available for inspection by FinCEN or the SEC upon request.

(c) *Minimum requirements.* The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the investment adviser's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

(d) *Notice requirement for unregistered advisers.* Each investment adviser described in paragraph (a)(2) of this section (unregistered adviser) must provide information to FinCEN as required by this paragraph (d).

(1) Each unregistered adviser must file with FinCEN a Notice described in Appendix D of this subpart. Completed notices may be submitted to FinCEN:

(i) By accessing FinCEN's Internet Web site, <http://www.fincen.gov>, and entering the appropriate information as directed; or

(ii) By mail to: FinCEN, P.O. Box 39, Vienna, VA 22183.

(2) The Notice required by paragraph (d)(1) of this section must be filed not later than 90 days after the unregistered adviser first becomes subject to this section, and thereafter annually not later than 90 days after the end of the fiscal year of the unregistered adviser. If an unregistered adviser subsequently terminates its advisory business or ceases to be subject to this section, the unregistered adviser must so advise FinCEN not later than 90 days thereafter indicating such termination or cessation.

(3) Each unregistered adviser must include the following information in the Notice required by paragraph (d)(1) of this section:

(i) The name of the unregistered adviser, including all family or complex names, trade names, and doing-business-as names;

(ii) The complete street address, telephone number, and, if applicable, the e-mail address of the unregistered adviser;

(iii) The name, telephone number, and, if applicable, e-mail address of the person or persons designated pursuant to paragraph (c)(3) of this section;

(iv) The total number of clients of the unregistered adviser; and

(v) The total assets under management of the unregistered adviser, as determined under the instructions to SEC Form ADV, Part 1A, as of the end of the adviser's most recent fiscal year.

(4) An unregistered adviser must file a revised Notice with FinCEN if there is a change in any of the information required by paragraph (d)(3)(i), (ii), or (iii) of this section. The revised Notice must be filed in accordance with paragraph (d)(1) of this section not later than 30 days after the date of any such change.

4. Add appendix D to subpart I of part 103 to read as follows:

Appendix D to Subpart I of Part 103 Unregistered Investment Advisers

Notice for Purposes of 31 CFR 103.150(d)

Complete either PART I or PART II of this Notice, as appropriate.

Notice is given, on behalf of (insert all names of unregistered adviser) _____ that: _____

Part I

(1) The investment adviser is an unregistered adviser described in 31 CFR 103.150(a)(2)