

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

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RIN 3235-AD21

Electronic Filing by Investment Advisers; Amendments To Form ADV; Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission is adopting technical revisions to Forms ADV, ADV-W and ADV-H and related rules under the Investment Advisers Act of 1940, which were published in the *Federal Register* on September 22, 2000 (65 FR 57437). The amendments are designed to aid advisers in the completion and filing of Forms ADV, ADV-W and ADV-H by clarifying certain instructions to the forms.

EFFECTIVE DATE: July 11, 2003.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is adopting technical amendments to rules 0-4, 203-1, 203-3, and 204-1 [17 CFR 275.04, 275.203-1, 275.203-3, and 275.204-1] and to Forms ADV, ADV-W and ADV-H [17 CFR 279.1, 279.2 and 279.3] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act"). The Commission is also withdrawing rule 203A-6 [17 CFR 275.203A-6] under the Advisers Act.

I. Discussion

Investment advisers today utilize the Investment Adviser Registration Depository ("IARD"), a one-stop electronic filing system, to make registration and "notice" filings with the SEC and state regulators over the Internet. In conjunction with launching electronic filing for advisers in 2000, the Commission adopted several rules and rule amendments under the Advisers Act, related to the IARD.¹ Certain administrative issues have arisen regarding these revised rules and forms,

and we are making technical amendments to address these issues.²

II. Rule and Form Amendments

A. Rule 0-4: General Requirements of Papers

We are amending rule 0-4 to extend filing deadlines when the IARD is closed to filings. Electronic filings otherwise required to be made in late December, when the IARD is shut down to process state renewals, must be filed on or before the following January 7. Other IARD filings required to be made on a day the IARD is closed to filings will be considered timely if filed on the following business day.³

B. Rule 204-1: Amendments to Application for Registration

We are deleting language in rule 204-1(b) that set out the transition period to IARD for SEC-registered advisers; this transition period ended April 30, 2001.⁴ We are also amending the rule to clarify that advisers must file all amendments to Part 1A of Form ADV electronically with the IARD absent a continuing hardship exemption.

C. Form ADV: Uniform Application for Investment Adviser Registration; Part 1A, Item 7: Financial Industry Affiliations

We are revising the instructions to Form ADV, Part 1A, Items 7A and 7B. The change to Item 7A accommodates advisers that share personnel with an affiliated broker-dealer. NASD will accept a single Form U-4 filing, through IARD, to register an individual both as the advisory firm's investment adviser representative and as a registered representative of the advisory firm's affiliated broker-dealer, provided the adviser names the affiliated brokerage firm on its Form ADV.⁵ Duplicative Form U-4 filings by an adviser and its affiliated broker-dealer create

unnecessary burdens; as a convenience to filers, we are amending Part 1A, Item 7 to permit (but not require) an adviser to name, on Section 7.A. of Schedule D, any related persons that are broker-dealers.

Another change, to Item 7B, allows an adviser to cross-reference to the Form ADV of its SEC-registered affiliate in order to disclose the limited partnerships and limited liability companies that the affiliate advises.⁶ An SEC-registered adviser may omit, from Section 7.B. of Schedule D, the details of LPs or LLCs managed by its related persons that are also SEC-registered advisers, so long as the adviser explains in the miscellaneous section of Schedule D that the detailed list is available on the related person's Form ADV.⁷ In order to pass a "completeness check" on the IARD, however, all advisers that answer "yes" to Item 7B must list at least one LP or LLC in Section 7.B of Schedule D. The IARD will not allow an adviser to file a Form ADV that fails the completeness check.

III. Effective Date; Findings Under the Administrative Procedure Act

The technical amendments adopted today shall become effective July 11, 2003. An adviser is not required to file a separate amendment to its Form ADV solely to reflect these revisions. However, when it next files a Form ADV (including amending its Form ADV), Form ADV-W or Form ADV-H on or after the effective date, the adviser must use the rules and forms as revised.⁸ These amendments make minor, technical changes to the manner in which advisers submit registration information to the Commission through

⁶ A number of advisers currently follow this procedure in reliance on the SEC staff response to a "frequently asked question" on the SEC's IARD website.

⁷ This explanation must state: (1) That the adviser has related SEC-registered investment advisers who manage investment related LPs or LLCs that are not listed in Section 7.B of its Schedule D, (2) that complete and accurate information about those investment related LPs or LLCs is available in Section 7.B of Schedule D of the Form ADVs of the related SEC-registered advisers; and (3) whether the adviser's clients are solicited to invest in any of those LPs or LLCs. If the adviser has a related person that is a general partner in an investment-related LP or manager of an investment-related LLC, and that related person is *not* registered with the SEC as an investment adviser, the adviser must continue to list all LPs and LLCs of that related person in Section 7.B of its own Schedule D.

⁸ An adviser filing a Form ADV amendment through the IARD on or after the effective date will necessarily be submitting the revised version of the form. Because the revisions to Section 7.A of Schedule D add data fields, advisers may need to re-enter their responses to that Section. Advisers should review their responses to all of the affected sections of the Form carefully to ensure that they remain correct and complete.

¹ Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

² In addition to the changes detailed below, we are (i) revising the Form ADV-H Item 1B language to refer to "Item 12 of Part 1A" of Form ADV rather than simply "Item 12", (ii) clarifying that Instruction 3 to Form ADV-W applies only to state-registered advisers, and (iii) amending rules 203-1, 203-3 and 204-1, the General Instructions to Form ADV, and Form ADV-W to reflect the correct name of the IARD operator due to a NASD corporate restructuring in the fall of 2002.

³ Rule 0-4(a)(2) [17 CFR 275.0-4(a)(2)].

⁴ We are also deleting rule 203A-6, which set out the transition period from SEC registration for certain advisers located in Ohio; this transition period ended March 30, 2000.

⁵ The Form U-4 is the NASD uniform application for securities industry registration or transfer. Investment advisers submit Form U-4 through IARD to register investment adviser representatives with state securities authorities; broker-dealers submit it through the Central Registration Depository (CRD) for their registered representatives.