

the IARD, or eliminate outdated or confusing material contained in the rules and instructions for submitting such information. Therefore, the Commission finds that there is good cause to adopt them as final rules. Moreover, the amendments impose no new obligations on advisers; they are “rules of agency * * * procedure” that fall within exceptions to the general notice and comment requirements of the Administrative Procedure Act.⁹

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁰

As discussed above, the rule and form amendments will aid advisers in the completion of Forms ADV, ADV-W and ADV-H. The technical amendments may enhance efficiency further by clarifying the forms and their instructions, thereby improving an adviser’s understanding of IARD and eliminating duplicative filings.

Because the rule and form amendments apply equally to all advisers, we do not anticipate that any competitive disadvantages would be created. We do not expect the amendments, as technical changes, to have an effect on capital formation or the capital markets.

V. Statutory Authority

We are adopting amendments to rule 0–4, General Requirements of Papers, under sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11(a)].

We are adopting amendments to rule 203–1, Application for Investment Adviser Registration, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

⁹ 5 U.S.C. 553(b)(3)(A) and (B). For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

¹⁰ 15 U.S.C. 80b–2(c).

We are adopting amendments to rule 203–3, Hardship Exemptions, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are withdrawing rule 203A–6 [17 CFR 275.203A–6], Transition Period for Ohio Investment Advisers, under section 203(h) [15 U.S.C. 80b–3(h)]; section 203A(c) [15 U.S.C. 80b–3a(c)]; and section 211(a) [15 U.S.C. 80b–11(a)] of the Investment Advisers Act of 1940.

We are adopting amendments to rule 204–1, Amendments to Application for Registration, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 77sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 78a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.2, Form ADV-W, under sections 203(h), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(h), 80b–4, and 80b–11(a)].

We are adopting amendments to rule 279.3, Form ADV-H, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

Need for Technical Amendment

As published, the final regulations contain errors which need to be clarified.

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule and Form Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 2. Paragraph (a) of § 275.04 is revised to read as follows:

§ 275.0–4 General requirements of papers and applications.

(a) *Filings.* (1) All papers required to be filed with the Commission shall, unless otherwise provided by the rules and regulations, be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules and regulations, such papers shall be deemed to have been filed with the Commission on the date when they are actually received by it.

(2) All filings required to be made electronically with the Investment Adviser Registration Depository (“IARD”) shall, unless otherwise provided by the rules and regulations in this part, be deemed to have been filed with the Commission upon acceptance by the IARD. Filings required to be made through the IARD on a day that the IARD is closed shall be considered timely filed with the Commission if filed with the IARD no later than the following business day.

(3) Filings required to be made through the IARD during the period in December of each year that the IARD is not available for submission of filings shall be considered timely filed with the Commission if filed with the IARD no later than the following January 7.

Note to Paragraph (a)(3): Each year the IARD shuts down to filers for several days during the end of December to process renewals of state notice filings and registrations. During this period, advisers are not able to submit filings through the IARD. Check the Commission’s Web site at <http://www.sec.gov/iard> for the dates of the annual IARD shutdown.

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■ 3. Part 275 is amended by:

■ a. Revising the term “NASD Regulation, Inc. (NASDR)” to read “NASD” in: §§ 275.203–1(d) and 275.204–1(b)(3).

■ b. Revising the term “NASD Regulation, Inc.” to read “NASD” in § 275.203–3(b)(3).

■ c. Revising the term “NASDR” to read “NASD” in the following sections:

1. 275.203–1(d);
2. 275.203–3, Note to Paragraph (b); and
3. 275.204–1(d) each time it appears.

■ 4. Section 275.203A–6 is removed and reserved.

■ 5. Section 275.204–1 is amended by: