

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Part 2510**

RIN 1210-AA94

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.
ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the definition of investment manager in section 3(38)(B) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under the proposed regulation, in lieu of filing a copy of their state registration forms with the Secretary of Labor, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA would have to electronically register through the Investment Adviser Registration Depository (IARD) as an investment adviser with the state in which they maintain their principal office and place of business. The IARD is a centralized electronic filing system, established by the Securities and Exchange Commission (SEC) in conjunction with state securities authorities. The IARD enables investment advisers to satisfy SEC and state registration obligations through the use of the Internet, and current filing information in the IARD database is readily available to the Department and the general public via the Internet. If adopted, the proposed regulation would make electronic registration through the IARD the exclusive method for state-registered investment advisers to satisfy filing requirements for investment manager status under section 3(38)(B)(ii) of Title I of ERISA. The proposed regulation would affect plan trustees, investment managers, other fiduciaries, and plan participants and beneficiaries.

DATES: Written comments (either in print or electronic format) are invited and must be submitted to the Department of Labor on or before February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to the Office of Regulations and Interpretations, Room N-5669, Employee Benefits Security Administration, U.S. Department of

Labor, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ERISA Investment Manager Electronic Registration NPRM. Written comments may also be sent by Internet to the following address: E-ORLEBSA@dol.gov. All submissions received will be available for public inspection and copying from 8:30 a.m. to 4:30 p.m. at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Florence M. Novellino, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693-8518 (not a toll free number).

SUPPLEMENTARY INFORMATION:**A. Background**

Under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), named fiduciaries of plans may appoint investment managers to manage assets of the plan. If the investment manager is a registered investment adviser, bank or insurance company, and meets the other requirements for being an "investment manager" as defined in section 3(38) of ERISA, the plan trustees are relieved from certain liabilities relating to the investment manager's performance.¹

In 1996, the National Securities Market Improvement Act (NSMIA) amended the Investment Advisers Act of 1940 (Advisers Act) to divide certain investment adviser regulatory responsibilities, including the registration requirements, between the Securities and Exchange Commission (SEC) and the states. Prior to 1996, most investment advisers were required to register with the SEC and in each state in which they were doing business. Pursuant to paragraph (1) of section 203A(a) of the Advisers Act, and SEC rule at 17 CFR 275.203A-1, certain investment advisers are prohibited from registering with the SEC but must register with the state in which the

adviser maintains its principal office and place of business.² The legislative history of NSMIA indicates that this division of regulatory responsibilities was intended, among other things, to encourage the SEC and state regulators to create a uniform system for "one-stop" filing that would benefit investors, reduce regulatory and paperwork burdens for registered investment advisers, and facilitate supervision of investment advisers.³

The SEC implemented that legislative intent at the federal level by publishing a final rule in September of 2000 at 17 CFR 275.203-1 which made electronic filing with the Investment Adviser Registration Depository (IARD) mandatory for SEC-registered advisers. Additionally, all states accept forms filed via the IARD to satisfy state registration requirements, and many mandate state registration via the IARD.⁴ Accordingly, the IARD has become a "one-stop" Internet-based centralized filing system that enables investment advisers to satisfy filing obligations with both federal and state securities regulators. Pertinent state registration information in the IARD database is available on the Internet to the general public through the Investment Adviser Public Disclosure (IAPD) Web site that may be directly accessed through the SEC's Web site or through links from various state and investor Web sites. The IAPD Web site contains investment adviser registration data, including information about current registration forms, registration status, services provided, fees charged, and disclosures about certain conflicts of interest and disciplinary events, if any. The IAPD Web site includes information on investment advisers that currently are registered with the SEC or a state, and also contains information on investment advisers that were registered

² Specifically, subject to certain exceptions, investment advisers fall into three categories under the NSMIA amendments. First, investment advisers having assets under management of less than \$25 million generally are prohibited from registering with the SEC but must register with the state regulatory authority in the state where the investment adviser maintains its principal office and place of business. Those with at least \$25 million but less than \$30 million may register with the SEC in lieu of filing with state authorities. Those with \$30 million or more must register with the SEC. Section 203A(a) of the Advisers Act is codified at 15 U.S.C. 80b-3a(a). See also 17 CFR 275.203A-2 for exemptions from the prohibition for certain investment advisers registering with the SEC.

³ S. Rep. No. 104-293, at 5 (1996).

⁴ The State of Wyoming has not promulgated a state investment adviser regulation requirement; therefore all Wyoming-based investment advisers are required to register under the Advisers Act with the SEC via the IARD. See 65 FR 57438, 57445 (Sept. 22, 2000).

¹ Section 402(c)(3) of ERISA states that a plan may provide that with respect to control or management of plan assets a named fiduciary may appoint an investment manager or managers to manage (including the power to acquire and dispose of) plan assets. Section 405(d) of ERISA provides in part that, if an investment manager or managers have been appointed under section 402(c)(3), then no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.