Investment Advisers

What is an investment adviser?

An "investment adviser" is generally a natural person or company that, for compensation, is engaged in the business of providing advice to others or issuing reports or analyses about securities. Investment advisers may include money managers, investment consultants, financial planners, general partners of private funds, and others who are compensated for providing advice about securities.

A person that falls under the definition of "investment adviser" (and is not eligible for an exclusion from the definition under Section 202(a)(11) of the Investment Advisers Act of 1940 (Advisers Act)) is required to register with the SEC or applicable state securities regulators as a registered investment adviser (RIA) unless they are exempt from applicable registration requirements as discussed on the next page (for example, as an exempt reporting adviser (ERA)).

Which investment advisers qualify for SEC registration?

An investment adviser's regulatory assets under management (RAUM) and activities dictate if they must register with the SEC or one or more state securities regulators. Investment advisers that manage more than $110 million in RAUM generally *must* register with the SEC, while investment advisers that manage less than $100 million in RAUM generally are *prohibited* from registering with the SEC. In addition, an adviser that is otherwise required to register with the SEC may elect not to register with the SEC if it can rely on an exemption from registration—learn more about exemptions on the next page.

Small Adviser

- RAUM: <$25 million
- Register with each state where the adviser meets that state's threshold for number of clients in that state.

Mid-sized Adviser

- RAUM: $25 million-$100 million
- Register:
  - ◊ with the SEC if:
    - » *not required to be registered* as an adviser with the state securities authority in the state where the adviser maintains its principal office and place of business; or
    - » *not subject to examination* as an adviser by the state where the adviser maintains its principal office and place of business.

      Note: A mid-sized adviser with its principal office and place of business in New York is not "subject to examination" and must register with the SEC.
  - ◊ with each state where the adviser meets that state's registration requirements (*e.g.,* threshold for number of clients in the state) and does not meet either of the above requirements.

    Note: An adviser should consult the investment adviser laws and the state securities authority for the states in which the adviser is "doing business" to determine state registration requirements.

Large Adviser

- RAUM: >$100 million
- Registration with the SEC is:
  - ◊ permitted when RAUM reaches $100 million;
  - ◊ required when RAUM reaches $110 million; and
  - ◊ required if it meets the mid-sized adviser requirements related to "not being required to be registered" or "not subject to examination" by the state securities authority of the state where the adviser maintains its principal office and place of business.
- Generally, must de-register from SEC when RAUM falls below $90 million (unless the adviser becomes a mid-sized adviser that must stay registered with the SEC (as discussed above); such as a mid-sized adviser that has a principal office and place of business in New York where the adviser is not "subject to examination").

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Investment Advisers *(continued)*

What exemptions from SEC registration requirements are available?

An investment adviser that would otherwise *be required* to register with the SEC may elect not to register with the SEC if it can rely on an *exemption* from registration. Below are some exemptions that may be available to certain investment advisers:

- Exempt Reporting Advisers (see below for further details);
- Charitable Organizations (Advisers Act Section 203(b)(4));
- Advisers that solely advise Small Business Investment Companies (SBICs) (Advisers Act Section 203(b)(7));
- Advisers that solely advise Rural Business Investment Companies (RBICs) (Advisers Act Section 203(b)(8));
- Advisers that solely advise insurance companies (Advisers Act Section 203(b)(2));
- Foreign Private Advisers (Advisers Act Section 203(b)(3)); and
- Commodity Trading Advisors (Advisers Act Section 203(b)(6)).

Do I qualify as an Exempt Reporting Adviser (ERA)?

An investment adviser that is otherwise *required* to register with the SEC may be able to rely on an *exemption* from registration and instead report as an ERA. Typically, investment advisers eligible to report as an ERA fall into one of two exemption categories:

Private Fund Adviser Exemption

- Assets Under Management (AUM): <$150 million
- Available if adviser is acting as an adviser solely to "qualifying private funds."

Venture Capital Adviser Exemption

- AUM: N/A
- Available if adviser is acting as an adviser solely to "venture capital funds."

What requirements apply to Exempt Reporting Advisers?

An ERA is not required to register with the SEC as an investment adviser under the Advisers Act.

While ERAs are not registered with the SEC, they are still subject to specific SEC reporting requirements and certain other Advisers Act and federal rules. They also may be subject to state rules (e.g., filing or registration requirements).

The specific SEC reporting requirements for ERAs are generally covered by Form ADV. An ERA may also be subject to state registration or reporting requirements.

Questions about the ERA reporting requirements?

→ Check out these resources:
- Reporting with the SEC as an Exempt Reporting Adviser
- Rules Implementing Dodd-Frank Act Amendments to the Investment Advisers Act: A Small Entity Compliance Guide
- Frequently Asked Questions on Form ADV and IARD
- Form ADV's General Instructions
- Building Blocks: Private Funds
- Building Blocks: Starting a Private Fund
- Building Blocks: What is a private secondary market?

→ Contact the SEC's Division of Investment Management at IMOCC@SEC.GOV.

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What exceptions to the general prohibition from SEC registration are available?

An investment adviser that would otherwise be *prohibited* from registering with the SEC may register if an *exception* to the prohibition is available.

Below are some exceptions that may apply to certain investment advisers:

Multi-State Adviser (Advisers Act Rule 203A-2(d))

- RAUM: <$100 million
- May register with the SEC if required to register in 15 or more states; otherwise the adviser must register with each state.

Advisers to Investment Companies (Advisers Act Section 203A)

- Must register with the SEC if an adviser to an investment company registered under the Investment Company Act of 1940 (Investment Company Act).

Advisers to Business Development Companies (Advisers Act Section 203A)

- Must register with the SEC if an adviser with at least $25 million of RAUM that advises a company that has elected to be a business development company pursuant to Section 54 of the Investment Company Act.

Related Advisers (Advisers Act Rule 203A-2(b))

- May register with the SEC if an adviser controls, is controlled by, or is under common control with an SEC-registered adviser that has the same principal office and place of business.

Questions about RIA registration and reporting requirements?

→ Check out these resources:
- Form ADV
- Electronic Filing for Investment Advisers on IARD
- Frequently Asked Questions on Form ADV and IARD
- Form PF Frequently Asked Questions (registered advisers that manage at least $150 million in private fund assets must file Form PF)
- NASAA State Regulator Contacts

→ Contact the SEC's Division of Investment Management at IMOCC@SEC.GOV.

Have suggestions on additional educational resources? Email smallbusiness@sec.gov.

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