

## **Exemption for Certain Investment Advisers Operating Through the Internet: A Small Entity Compliance Guide<sup>i</sup>**

This compliance guide is divided into the following parts:

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### **Introduction**

On March 27, 2024, the Securities and Exchange Commission (the “Commission”) adopted amendments to a rule that provides an exemption from the prohibition on registration with the Commission that may otherwise affect certain investment advisers seeking to register with the Commission. In particular, the Commission amended rule 203A-2(e) under the Investment Advisers Act of 1940 (the “Internet Adviser Exemption”), which exempts certain investment advisers that provide advisory services through the internet (“internet investment advisers”) from the prohibition, subject to certain exceptions, on Commission registration for investment advisers with less than \$100 million in assets under management. The Commission also adopted related amendments to Form ADV. The amendments are designed to modernize the rule’s conditions to account for the evolution in technology and the investment advisory industry since the initial adoption of the rule in 2002.

### **Who is affected by the amendments?**

The amendments will apply to investment advisers seeking to rely on the Internet Adviser Exemption as a basis for registration with the Commission.

### **What do the amendments require?**

The amendments will:

- Require an adviser that relies on the Internet Adviser Exemption to provide investment advice to all of its clients exclusively through an “operational” interactive website at all times during which it relies on the exemption;
- Eliminate the *de minimis* exception in the rule, which permitted advisers relying on the Internet Adviser Exemption to have a limited number (*i.e.*, fewer than 15) of non-internet clients in a 12-month period; and
- Amend Form ADV to require an adviser relying on the Internet Adviser Exemption as a basis for registration to represent on Schedule D of its Form ADV that, among other things, it has an operational interactive website.

### **What do the amendments prohibit?**

The amendments will prohibit internet investment advisers relying on the Internet Adviser Exemption from providing advice to non-internet clients. In addition, internet investment

advisers under the rule cannot use its advisory personnel to elaborate or expand upon the investment advice provided by its operational interactive website.

The amendments will not prohibit advisory personnel from all interactions with advisory clients. Advisory personnel generally can continue to assist clients with technical issues or collect feedback in connection with the use of the website (*e.g.*, accessing the website, etc.), including by assisting clients with explanations of how the algorithm generating the investment advice was developed or operates.

### **When must an adviser begin to comply with the amendments?**

The amendments will become effective on July 8, 2024. An adviser relying on the Internet Adviser Exemption must comply with the rule, including the requirement to amend their Form ADV to include a representation that the adviser is eligible to register with the Commission under the Internet Adviser Exemption, by March 31, 2025. Most investment advisers will have filed their annual updating amendments to Form ADV by this date (*i.e.*, 90 days after the December 31, 2024, fiscal year end). An adviser that is no longer eligible to rely on the amended exemption and does not otherwise have a basis for registration with the Commission must register in one or more states and withdraw its registration with the Commission by filing a Form ADV-W by June 29, 2025.

### **Other resources**

The adopting release can be found on the Commission’s website at <https://www.sec.gov/files/rules/final/2024/ia-6578.pdf>.

The proposing release can be found on the Commission’s website at <https://www.sec.gov/files/rules/proposed/2023/ia-6354.pdf>.

### **Contacting the Commission**

The Commission’s Division of Investment Management is happy to assist small entities with questions regarding the amendments to the Internet Adviser Exemption. You may submit a question by email to [IMOCC@sec.gov](mailto:IMOCC@sec.gov). Additionally, you may contact the Division of Investment Management’s Office of Chief Counsel at (202) 551-6825.

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<sup>i</sup> This guide was prepared by the staff of the U.S. Securities and Exchange Commission as a “small entity compliance guide” under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains rules and form amendments adopted by the Commission, but is not a substitute for any rule or form itself. Only a rule or form itself can provide complete and definitive information regarding its requirements.