



# SEC

OFFICE of INVESTOR  
EDUCATION and ADVOCACY

## Investor Bulletin:

### Transition of Mid-Sized Investment Advisers from Federal to State Registration

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to make investors aware of upcoming changes in the registration rules for some investment advisers.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") was signed into law. The Dodd-Frank Act amends certain provisions of the Investment Advisers Act of 1940 by delegating generally to the states responsibility over certain mid-sized investment advisers – *i.e.*, those that have between \$25 million and \$100 million of assets under management ("AUM").

As discussed in greater detail below, the new law and rules adopted by the SEC will require a significant number of advisers currently registered with the SEC to withdraw their registrations with the SEC and to switch to registration with one or more state securities authorities. This means that state securities authorities will have primary regulatory authority over a substantial number of investment advisers that previously were subject to primary regulation by the SEC. Larger investment advisers, generally, those with over \$100 million of AUM, will continue to be registered with the SEC and will be subject to federal regulation (state investment adviser laws requiring registration, licensing, and qualification have been preempted for these advisers).

These changes began to apply to new applicants for SEC registration on July 21, 2011, but will not apply to advisers currently registered with the SEC until 2012.

#### New AUM Thresholds for SEC Registration

The Dodd-Frank Act and SEC rules increased the threshold above which all investment advisers must register with the SEC from \$30 million to \$110 million of AUM. Prior to July 2011, an investment adviser regulated by the state in which it maintained its principal office and place of business generally was prohibited from registering with the SEC unless the adviser had at least \$25 million of AUM, and was required to register with the SEC once it had at least \$30 million of AUM. Investment advisers with less than \$110 million of AUM may be prohibited from registering with the SEC, depending on the size of the adviser's AUM and whether the adviser meets other requirements.

The new thresholds and requirements for registration are as follows:

- A small adviser with less than \$25 million of AUM is prohibited from SEC registration if its principal office and place of business is in a state that regulates advisers (currently all states except Wyoming).

- A mid-sized adviser with AUM between \$25 million and \$100 million of AUM:

- Is required to register with the SEC if its principal office and place of business is in New York or Wyoming, unless a registration exemption is available, *e.g.*, exemption for certain advisers to private funds.
- Is prohibited from SEC registration if its principal office and place of business is in any state except New York or Wyoming, and the mid-sized adviser is required to be registered in that state. If the mid-sized adviser is not required to be registered in that state, then the adviser must register with the SEC, unless a registration exemption is available.

- An adviser approaching \$100 million of AUM may rely on a registration “buffer” that

ranges from \$90 million to \$110 million of AUM. The adviser:

- May register with the SEC when it acquires \$100 million of AUM;
- Must register with the SEC once it reaches \$110 million of AUM, unless a registration exemption is available; and
- Once registered with the SEC, is not required to withdraw from SEC registration and register with the states until the adviser has less than \$90 million of AUM.
- A large adviser with at least \$110 million of AUM is required to register with the SEC, unless a registration exemption is available.

### Timing of Transition

The SEC has adopted transition rules which are geared toward implementing the transition to state registration in an orderly manner. The following table summarizes the key dates for the transition:

July 21, 2011 to December 31, 2011	January 1, 2012	March 30, 2012	June 28, 2012
New registration thresholds and requirements apply to new applicants, but not to existing SEC-registered advisers until the dates indicated in this table, as applicable.	Each SEC-registered adviser as of July 21, 2011 must remain registered with the SEC until this date (unless relying on an exemption).	Last day for all SEC-registered advisers to file the required <a href="#">Form ADV</a> amendment.	Mid-sized advisers not eligible for SEC registration must file form <a href="#">ADV-W</a> to withdraw by this date.

- **Existing Registrants.** As described in the table above, each SEC-registered adviser as of July 21, 2011 must remain registered with the SEC until January 1, 2012 (unless an exemption from SEC-registration is available).
  - Each SEC-registered adviser as of January 1, 2012 (regardless of size) must file a [Form ADV](#) amendment by March 30, 2012, which for most investment advisers will be their annual updating amendment. The adviser should reflect the current market value of its AUM determined within 90 days of the filing, and should update all of the other questions on the form.
  - Mid-sized advisers that are no longer eligible for SEC registration will need to be registered with the state securities authorities by June 28, 2012, and must withdraw their SEC registrations by filing [Form ADV-W](#), indicating a “partial withdrawal,” no later than that date.
- **New Applicants.** All new mid-sized advisers are prohibited from registering with the SEC and must register with the state securities authorities. These advisers must register with the applicable state, unless a registration exemption is available in that state, *e.g.*, exemption for certain advisers to private funds.

## Who Regulates Your Investment Adviser?

It is important to know which regulator oversees your investment adviser. Is your investment adviser regulated primarily by the SEC or by a state securities authority? Do you know whether your investment adviser is small, mid-sized, or large (based on its AUM)? Consider contacting your investment adviser to find out who has primary responsibility for regulating it.

### Related Information

[Check Out Your Investment Adviser on the Investment Adviser Public Disclosure Database \(IAPD\)](#)

[Frequently Asked Questions Regarding Mid-Sized Advisers](#)

The adopting release amending Form ADV, dated June 22, 2011, can be found at: <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

Amended Form ADV can be found at: <http://www.sec.gov/rules/final/2011/ia-3221-appd.pdf>.

Amended Form ADV instructions can be found at: <http://www.sec.gov/rules/final/2011/ia-3221-appa.pdf> and <http://www.sec.gov/rules/final/2011/ia-3221-appb.pdf>.

For information on how the new law and rules adopted by the SEC might affect small businesses, see the [Small Entity Compliance Guide: Rules Implementing Dodd-Frank Act Amendments to the Investment Advisers Act](#).

The North American Securities Administrators Association (NASAA) provides information for mid-sized investment advisers regarding the switch from federal to state registration:

<http://www.nasaa.org/1719/ia-switch-resource-center/>

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.

