

CORRECTED

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 279

[Release No. IA-2504]

Technical Amendments to Form ADV, Form ADV-W, Form ADV-H, Form ADV-E

AGENCY: Securities and Exchange Commission

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is making technical amendments to Form ADV under the Investment Advisers Act of 1940 (“Advisers Act”). Form ADV is the form advisers use to register with the Commission and the state securities regulatory authorities. The Commission is also making technical amendments to Form ADV-W, Form ADV-H, and Form ADV-E.

EFFECTIVE DATE: April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or Jennifer L. Sawin, Assistant Director, at 202-551-6787 or IArules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5041.

SUPPLEMENTARY INFORMATION

Under section 203A(a) of the Advisers Act, an adviser that is “regulated or required to be regulated” as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser has \$25 million of assets under management, or advises an investment company registered under the

Investment Company Act of 1940.¹ All investment advisers—regardless of the amount of assets they manage or whether they advise a registered investment company—may register with the Commission if their principal office and place of business is located in a state that has not enacted a statute regulating advisers.²

Recently the U.S. Virgin Islands enacted a statute regulating investment advisers.³ As a consequence, an investment adviser with a principal office and place of business in the Virgin Islands may not register with the Commission unless it has at least \$25 million of assets under management, advises a registered investment company or is eligible to rely on one of the exemptions from the prohibition on registration contained in rule 203A-2.⁴

The Commission is making technical amendments to Part 1A, Item 2 of Form ADV, as well as to Form ADV-W and Form ADV-E, to reflect the addition of the U.S. Virgin Islands to the group of states with investment adviser statutes.⁵ Form ADV-W is the form advisers use to

¹ 15 U.S.C. 80b-3a. The Commission has adopted various additional exemptions from the prohibition on SEC registration. See rule 203A-2 (17 CFR 275.203A-2).

² Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)). Section 202(a)(19) (15 U.S.C. 80b-2(a)(19)) of the Advisers Act defines “state” to include, in addition to the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

³ 9 V.I. CODE ANN. §§ 601- 672 (2004).

⁴ Absent eligibility for Commission registration, these advisers are subject to the registration provisions of U.S. Virgin Islands law. In addition, advisers ineligible for Commission registration that have their principal office and place of business in the U.S. Virgin Islands may be required to register in one or more other states, if they have six or more clients that are residents of that state or have a place of business in that state. See Advisers Act section 222(d)(15 U.S.C. 80b-18a(d)).

⁵ 17 CFR 279.1 (Form ADV); 17 CFR 279.2 (Form ADV-W); 17 CFR 279.8 (Form ADV-E). These changes include not only removing reference to the Virgin Islands from Item 2.A(2) in Part 1A of Form ADV (concerning an adviser’s eligibility to register with the Commission), but also adding check-boxes for the Virgin Islands to Item 2.B. in Part 1A of Form ADV (concerning state notice filings for SEC-registered investment advisers), and paragraph (b) of the Status section of Form ADV-W (concerning withdrawals from state investment adviser registration). These check-

withdraw from registration, and Form ADV-E is the cover page used to submit independent public accountants' certification of surprise examinations under the adviser custody rule, rule 206(4)-2.⁶ In addition, the Commission is making amendments to Form ADV-H, the form advisers use to apply for a hardship exemption from the requirement to register with the Commission electronically, and to Item 16 of the General Instructions to Form ADV, to update the Commission's mailing address.

I. CERTAIN FINDINGS

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when the agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."⁷ The Commission is making technical amendments to Part 1A, Item 2 of Form ADV, Form ADV-W and Form ADV-E in light of new legislation in the U.S. Virgin Islands and to update out-of-date cross-references, and making technical amendments to Form ADV-H and the General Instructions to Form ADV to update the Commission's mailing address. The Commission, therefore, finds that publishing the amendments for comment is unnecessary.⁸

boxes will appear on the paper version of the Forms, but will not be available for use by electronic filers on IARD until the IARD system is reprogrammed to support the Virgin Islands' participation in the system as a state securities administrator.

⁶ 17 CFR 275.206(4)-2. The Commission is also updating Form ADV-E's cross-references to the rule to reflect the recent amendments to the rule.

⁷ 5 U.S.C. 553(b).

⁸ 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).

Publication of a substantive rule not less than 30 days before its effective date is required by the APA except as otherwise provided by the agency for good cause.⁹ For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for making these technical amendments effective on April 7, 2006.

II. 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 Because the amendments are limited to technical amendments, we do not anticipate that any competitive advantages or disadvantages would be created. We do not expect the amendments, as technical amendments, to have an effect on efficiency, or on capital formation or the capital markets.

III. STATUTORY AUTHORITY

We are adopting technical amendments to Form ADV (17 CFR 279.1) under the authority set forth in 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)).

⁹ 5 U.S.C. 553(d).

¹⁰ 15 U.S.C. 80b-2(c).

We are adopting technical amendments to Form ADV-W (17 CFR 279.2) under the authority set forth in 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 technical amendments to Form ADV-H (17 CFR 279.3) under the authority set forth in 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 technical amendments to Form ADV-E (17 CFR 279.8) under the authority set forth in sections 204, 206, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4, 80b-6, and 80b-11(a)).

TEXT OF FORM AMENDMENTS

List of Subjects in 17 CFR Part 279

Reporting and recordkeeping requirements; Securities.

Accordingly, 17 CFR Part 279 is amended as follows:

PART 279 – FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, et seq.

2. Form ADV (referenced in §279.1) is amended by:
 - a. Removing “the U.S. Virgin Islands or” from Part 1A, Item 2 A.(2); and
 - b. Inserting “ VI” in the table of Part 1A, Item 2 B before “ VA”.

3. Form ADV General Instruction 16 (referenced in §279.1) is amended by revising “450 5th Street, N.W., Mail Stop A-2, Washington, DC 20549” to read “100 F Street, NE, Mail Stop 0-25, Washington, DC 20549.”

Note: Form ADV does not and this amendment will not appear in the Code of Federal Registrations.

4. Form ADV-W (referenced in §279.2) is amended by inserting “ VI” before “ VA” in paragraph (b) of the Status section.

Note: Form ADV-W does not and this amendment will not appear in the Code of Federal Registrations.

5. Form ADV-H (referenced in §279.3) is amended in Item 4 by revising “Office of Registrations and Examinations, Mail Stop 0-25, 450 Fifth Street, NW, Washington, DC 20549” to read “Branch of Registrations and Examinations, Mail Stop 0-25, 100 F Street, NE, Washington, DC 20549”.

Note: Form ADV-H does not and this amendment will not appear in the Code of Federal Registrations.

6. Form ADV-E (referenced in §279.8) is amended by:

a. In 2, revising the table to read:

AL	AK	AZ	AR	CA
CO	CT	DE	DC	FL
GA	HI	ID	IL	IN
IA	KS	KY	LA	ME
MO	MT	NE	NV	NH
JN	NM	NY	NC	ND
OH	OK	OR	PA	RI
SC	SD	TN	TX	UT
VT	VI	VA	WA	WV
WI	WY	Puerto Rico	Other (specify):	

b. In Instructions 2 and 3, and in the paragraph with the heading “SEC’s Collection of Information,” revising references to “rule 206(4)-2(a)(5)” to read “rule 206(4)-2(a)(3)(ii)(B)”;

and

c. In the paragraph with the heading “SEC’s Collection of Information,” revising “17 C.F.R. §275.206(4)-2(a)(5)” to read “17 CFR §275.206(4)-2(a)(3)(ii)(B)”.

Note: Form ADV-E does not and this amendment will not appear in the Code of Federal Registrations.

By the Commission

Nancy M. Morris
Secretary

March 30, 2006