

what you buy. Therefore, our profits, and our salespersons' compensation, may vary by product and over time." The prominent statement also must identify an appropriate person at the firm with whom the customer can discuss the differences.

(2) Will not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.

(b) *Solely incidental to.* A broker or dealer provides advice that is not solely incidental to the conduct of its business as a broker or dealer within the meaning of section 202(a)(11)(C) of the Advisers Act or to the brokerage services provided to accounts from which it receives special compensation within the meaning of paragraph (a)(1)(i) of this section if the broker or dealer (among other things, and without limitation):

(1) Charges a separate fee, or separately contracts, for advisory services;

(2) Provides advice as part of a financial plan or in connection with providing financial planning services and:

(i) Holds itself out generally to the public as a financial planner or as providing financial planning services;

(ii) Delivers to the customer a financial plan; or

(iii) Represents to the customer that the advice is provided as part of a financial plan or in connection with financial planning services; or

(3) Exercises investment discretion, as that term is defined in paragraph (d) of this section, over any customer accounts.

(c) *Special rule.* A broker or dealer registered with the Commission under section 15 of the Exchange Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Advisers Act.

(d) *Investment discretion.* For purpose of this section, the term *investment discretion* has the same meaning as given in section 3(a)(35) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(35)), except that it does not include invest-

ment discretion granted by a customer on a temporary or limited basis.

[70 FR 20454, Apr. 19, 2005]

§ 275.203-1 Application for investment adviser registration.

(a) *Form ADV.* To apply for registration with the Commission as an investment adviser, you must complete and file Form ADV (17 CFR 279.1) by following the instructions in the Form.

(b) *Electronic filing.* (1) If you apply for registration after January 1, 2001, you must file electronically with the Investment Adviser Registration Depository (IARD), unless you have received a hardship exemption under § 275.203-3.

NOTE TO PARAGRAPH (b)(1): Information on how to file with the IARD is available on the Commission's website at <http://www.sec.gov/iard>.

(2) You are not required to file with the Commission a copy of Part II of Form ADV if you maintain a copy of your Part II (and any brochure you deliver to clients) in your files. The copy maintained in your files is considered filed with the Commission.

NOTE TO PARAGRAPH (b)(2): The Commission has proposed, but not adopted, substantial changes to Part II of Form ADV. Thus, the rules for preparing, delivering, and offering Part II (or a brochure containing at least the information contained in Part II) have not changed. If you are an SEC-registered adviser, however, you no longer have to file Part II with the Commission. Instead, you must keep a copy in your files, and update the information in your Part II whenever it becomes materially inaccurate. State law may continue to require you to file Part II with the appropriate State securities authority on paper, regardless of whether you are filing Part 1 on paper or through the IARD.

(c) *When filed.* Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

(d) *Filing fees.* You must pay FINRA (the operator of the IARD) a filing fee. The Commission has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed application for registration will not be accepted by FINRA, and thus will not be considered filed with the

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Commission, until you have paid the filing fee.

[65 FR 57448, Sept. 22, 2000; 65 FR 81737, Dec. 27, 2000; 68 FR 42248, July 17, 2003; 73 FR 4694, Jan. 28, 2008]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 275.203-2 Withdrawal from investment adviser registration.

(a) *Form ADV-W*. You must file Form ADV-W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

(b) *Electronic filing*. Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV-W you file must be filed with the IARD, unless you have received a hardship exemption under § 275.203-3.

(c) *Effective date—upon filing*. Each Form ADV-W filed under this section is effective upon acceptance by the IARD, provided however that your investment adviser registration will continue for a period of sixty days after acceptance solely for the purpose of commencing a proceeding under section 203(e) of the Act (15 U.S.C. 80b-3(e)).

(d) *Filing fees*. You do not have to pay a fee to file Form ADV-W through the IARD.

(e) *Form ADV-W is a report*. Each Form ADV-W required to be filed under this section is a “report” within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b-4 and 80b-7).

[65 FR 57449, Sept. 22, 2000]

§ 275.203-3 Hardship exemptions.

This section provides two “hardship exemptions” from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

(a) *Temporary hardship exemption—(1) Eligibility for exemption*. If you are registered or are registering with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated

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technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

(2) *Application procedures*. To request a temporary hardship exemption, you must:

(i) File Form ADV-H (17 CFR 279.3) in paper format with no later than one business day after the filing that is the subject of the ADV-H was due; and

(ii) Submit the filing that is the subject of the Form ADV-H in electronic format with the IARD no later than seven business days after the filing was due.

(3) *Effective date—upon filing*. The temporary hardship exemption will be granted when you file a completed Form ADV-H.

(b) *Continuing hardship exemption—(1) Eligibility for exemption*. If you are a “small business” (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption.

The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures*. To apply for a continuing hardship exemption, you must file Form ADV-H at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after you file Form ADV-H.

(3) *Effective date—upon approval*. You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to FINRA in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption*. Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business*. You are a “small business” for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked “no” to each question in Item 12 that you were required to answer.