

Securities and Exchange Commission

§ 275.203A-1

Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business in the United States is exempt from the requirement to register under section 203 of the Act if the investment adviser:

(1) Acts solely as an investment adviser to one or more qualifying private funds; and

(2) Manages private fund assets of less than \$150 million.

(b) *Non-United States investment advisers.* For purposes of section 203(m) of the Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business outside of the United States is exempt from the requirement to register under section 203 of the Act if:

(1) The investment adviser has no client that is a United States person except for one or more qualifying private funds; and

(2) All assets managed by the investment adviser at a place of business in the United States are solely attributable to private fund assets, the total value of which is less than \$150 million.

(c) *Frequency of Calculations.* For purposes of this section, calculate private fund assets annually, in accordance with General Instruction 15 to Form ADV (§279.1 of this chapter).

(d) *Definitions.* For purposes of this section:

(1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV (§279.1 of this chapter).

(2) *Place of business* has the same meaning as in §275.222-1(a).

(3) *Principal office and place of business* of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(4) *Private fund assets* means the investment adviser's assets under management attributable to a qualifying private fund.

(5) *Qualifying private fund* means any private fund that is not registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) and has not elected to be treated as a business development company pursuant to

section 54 of that Act (15 U.S.C. 80a-53). For purposes of this section, an investment adviser may treat as a private fund an issuer that qualifies for an exclusion from the definition of an "investment company," as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), in addition to those provided by section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7)), provided that the investment adviser treats the issuer as a private fund under the Act (15 U.S.C. 80b) and the rules thereunder for all purposes.

(6) *Related person* has the same meaning as in §275.206(4)-2(d)(7).

(7) *United States* has the same meaning as in §230.902(1) of this chapter.

(8) *United States person* means any person that is a U.S. person as defined in §230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

NOTE TO PARAGRAPH (d)(8): A client will not be considered a United States person if the client was not a United States person at the time of becoming a client.

[76 FR 39703, July 6, 2011]

§ 275.203A-1 Eligibility for SEC registration; Switching to or from SEC registration.

(a) *Eligibility for SEC registration of mid-sized investment advisers.* If you are an investment adviser described in section 203A(a)(2)(B) of the Act (15 U.S.C. 80b-3a(a)(2)(B)):

(1) *Threshold for SEC registration and registration buffer.* You may, but are not required to register with the Commission if you have assets under management of at least \$100,000,000 but less than \$110,000,000, and you need not withdraw your registration unless you have less than \$90,000,000 of assets under management.

(2) *Exceptions.* This paragraph (a) does not apply if:

(i) You are an investment adviser to an investment company registered

under the Investment Company Act of 1940 (15 U.S.C. 80a) or to a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-54), and has not withdrawn the election; or

(ii) You are eligible for an exemption described in § 275.203A-2 of this chapter.

(b) *Switching to or from SEC registration—(1) State-registered advisers—switching to SEC registration.* If you are registered with a state securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you are eligible for SEC registration and are not relying on an exemption from registration under sections 203(1) or 203(m) of the Act (15 U.S.C. 80b-3(1), (m)).

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you are not eligible for SEC registration and are not relying on an exemption from registration under sections 203(1) or 203(m) of the Act (15 U.S.C. 80b-3(1), (m)), you must file Form ADV-W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then are eligible for SEC registration). During this period while you are registered with both the Commission and one or more state securities authorities, the Act and applicable State law will apply to your advisory activities.

[76 FR 43011, July 19, 2011]

§ 275.203A-2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) does not apply to:

(a) *Pension consultants.* (1) An investment adviser that is a “pension consultant,” as defined in this section, with respect to assets of plans having an aggregate value of at least \$200,000,000.

(2) An investment adviser is a pension consultant, for purposes of paragraph (a) of this section, if the investment adviser provides investment advice to:

(i) Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) [29 U.S.C. 1002(3)];

(ii) Any governmental plan described in section 3(32) of ERISA (29 U.S.C. 1002(32)); or

(iii) Any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)).

(3) In determining the aggregate value of assets of plans, include only that portion of a plan’s assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during a 12-month period ended within 90 days of filing an annual updating amendment to Form ADV (17 CFR 279.1).

(b) *Investment advisers controlling, controlled by, or under common control with an investment adviser registered with the Commission.* An investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to register, and registered with, the Commission (“registered adviser”), provided that the principal office and place of business of the investment adviser is the same as that of the registered adviser. For purposes of this paragraph, control means the power to direct or cause the direction of the management or policies of an investment adviser, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of an investment adviser is presumed to control that investment adviser.

(c) *Investment advisers expecting to be eligible for Commission registration within 120 Days.* An investment adviser that:

(1) Immediately before it registers with the Commission, is not registered or required to be registered with the