

after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (j)(1) and (2) of this section, a non-resident investment adviser need not keep or preserve within the United States copies of the books and records referred to in said paragraphs (j)(1) and (2), if:

(i) Such non-resident investment adviser files with the Commission, at the time or within the period provided by paragraph (j)(2) of this section, a written undertaking, in form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at its principal office in Washington, DC, or at any Regional Office of the Commission designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at its principal office in Washington, DC or at any Regional Office of said Commission specified in a demand for copies of books and records made by or on behalf of said Commission, true, correct, complete and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Investment Advisers Act of 1940. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with Rule 204-2(j) under the Investment Advisers Act of 1940. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce same.

and

(ii) Such non-resident investment adviser furnishes to the Commission, at his own expense 14 days after written demand therefor forwarded to him by registered mail at his last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such investment adviser is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the Commission at its principal office in Washington, DC, or at any Regional Office of the Commission which may be specified in said written demand.

(4) For purposes of this rule the term *non-resident investment adviser* shall have the meaning set out in § 275.0-2(d)(3) under the Act.

(k) Every investment adviser that registers under section 203 of the Act (15 U.S.C. 80b-3) after July 8, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commission.

[26 FR 5002, June 6, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 275.204-2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**§ 275.204-3 Delivery of brochures and brochure supplements.**

(a) *General requirements.* If you are registered under the Act as an investment adviser, you must deliver a brochure and one or more brochure supplements to each client or prospective client that contains all information required by Part 2 of Form ADV [17 CFR 279.1].

(b) *Delivery requirements.* Subject to paragraph (g), you (or a supervised person acting on your behalf) must:

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(1) Deliver to a client or prospective client your current brochure before or at the time you enter into an investment advisory contract with that client.

(2) Deliver to each client, annually within 120 days after the end of your fiscal year and without charge, if there are material changes in your brochure since your last annual updating amendment:

(i) A current brochure, or

(ii) The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide your current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current brochure from you, and the Web site address for obtaining information about you through the Investment Adviser Public Disclosure (IAPD) system.

(3) Deliver to each client or prospective client a current brochure supplement for a supervised person before or at the time that supervised person begins to provide advisory services to the client; provided, however, that if investment advice for a client is provided by a team comprised of more than five supervised persons, a current brochure supplement need only be delivered to that client for the five supervised persons with the most significant responsibility for the day-to-day advice provided to that client. For purposes of this section, a supervised person will provide advisory services to a client if that supervised person will:

(i) Formulate investment advice for the client and have direct client contact; or

(ii) Make discretionary investment decisions for the client, even if the supervised person will have no direct client contact.

(4) Deliver the following to each client promptly after you create an amended brochure or brochure supplement, as applicable, if the amendment adds disclosure of an event, or materially revises information already disclosed about an event, in response to Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (Disciplinary Information), respectively, (i) the

amended brochure or brochure supplement, as applicable, along with a statement describing the material facts relating to the change in disciplinary information, or (ii) a statement describing the material facts relating to the change in disciplinary information.

(c) *Exceptions to delivery requirement.*

(1) You are not required to deliver a brochure to a client:

(i) That is an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64] or a business development company as defined in that Act, provided that the advisory contract with that client meets the requirements of section 15(c) of that Act [15 U.S.C. 80a-15(c)]; or

(ii) Who receives only impersonal investment advice for which you charge less than \$500 per year.

(2) You are not required to deliver a brochure supplement to a client:

(i) To whom you are not required to deliver a brochure under subparagraph (c)(1) of this section;

(ii) Who receives only impersonal investment advice; or

(iii) Who is an officer, employee, or other person related to the adviser that would be a “qualified client” of your firm under § 275.205-3(d)(1)(iii).

(d) *Wrap fee program brochures.* (1) If you are a sponsor of a wrap fee program, then the brochure that paragraph (b) of this section requires you to deliver to a client or prospective client of the wrap fee program must be a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV. Any additional information in a wrap fee program brochure must be limited to information applicable to wrap fee programs that you sponsor.

(2) You do not have to deliver a wrap fee program brochure if another sponsor of the wrap fee program delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV.

NOTE TO PARAGRAPH (d): A wrap fee program brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b) of this section.

(e) *Multiple brochures.* If you provide substantially different advisory services to different clients, you may provide them with different brochures, so long as each client receives all information about the services and fees that are applicable to that client. The brochure you deliver to a client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will provide or charge, or that you propose to provide or charge, to that client.

(f) *Other disclosure obligations.* Delivering a brochure or brochure supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or state laws or regulations.

(g) *Transition rule.* (1) Within 60 days after the date by which you are first required by § 275.204-1(c) to electronically file your brochure(s) with the Commission, you must deliver to each of your existing clients your current brochure and all current brochure supplements as required by Part 2 of Form ADV.

(2) As of the date by which you are first required to electronically file your brochure(s) with the Commission, you must begin using your current brochure and current brochure supplements as required by Part 2 of Form ADV to comply with the requirements of this section pertaining to initial delivery to new and prospective clients.

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

(1) *Impersonal investment advice* means investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.

(2) *Current brochure* and *current brochure supplement* mean the most recent revision of the brochure or brochure supplement, including all amendments to date.

(3) *Sponsor* of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding

the selection of, other investment advisers in the program.

(4) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(5) *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

[75 FR 49268, Aug. 12, 2010]

#### § 275.204-4 Reporting by exempt reporting advisers.

(a) *Exempt reporting advisers.* If you are an investment adviser relying on the exemption from registering with the Commission under section 203(1) or (m) of the Act (15 U.S.C. 80b-3(1) or 80b-3(m)), you must complete and file reports on Form ADV (17 CFR 279.1) by following the instructions in the Form, which specify the information that an exempt reporting adviser must provide.

(b) *Electronic filing.* You must file Form ADV electronically with the Investment Adviser Registration Depository (IARD) unless you have received a hardship exemption under paragraph (e) of this section.

NOTE TO PARAGRAPH (b): Information on how to file with the IARD is available on the Commission's Web site at <http://www.sec.gov/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 Form ADV will not be accepted by FINRA, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Temporary hardship exemption—(1) Eligibility for exemption.* If you have unanticipated technical difficulties that