

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA-1787; File No. S7-2-99]

RIN 3235-AH60

Transition Rule for Ohio Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment a proposed rule under the Investment Advisers Act of 1940 to assist investment advisers that will be subject to a new Ohio investment adviser statute. The proposed rule would provide a transition process for these investment advisers to change from Commission to state registration.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-2-99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Jeffrey O. Himstreet, Attorney, or Arthur B. Laby, Special Counsel, at (202) 942-0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed rule 203A-6 [17 CFR 275.203A-6] and a proposed amendment to Schedule I of Form ADV [17 CFR 279.1], both under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act").

I. Background

Under the Advisers Act, as amended by the Investment Advisers Supervision

Coordination Act ("Coordination Act"),¹ the Commission has regulatory responsibility for investment advisers that have at least \$25 million of assets under management or advise a registered investment company.² The Commission also has regulatory responsibility for advisers that have less than \$25 million of assets under management and have their principal place of business in a state that has not enacted an investment adviser statute.³ At the time the Coordination Act was adopted, Ohio was one of four states that did not have an investment adviser statute.⁴ Recently, Ohio enacted investment adviser legislation that will become effective by March 31, 1999.⁵

The Commissioner of the Ohio Division of Securities has requested that we create a transition process to assist in the implementation of the Ohio law.⁶ The transition process would primarily affect investment advisers that have their principal place of business in Ohio and are eligible for Commission registration only because of the location of their principal office and place of business ("smaller Ohio advisers"). Absent a transition rule, the preemptive provisions of the Coordination Act would prevent the Ohio Division of Securities (and other state securities authorities) from requiring the registration of smaller Ohio advisers until the advisers withdrew from Commission registration or we canceled their registrations.⁷ To assist the Ohio Division of Securities and to facilitate the transition of regulatory responsibilities for smaller Ohio advisers, we are proposing for public comment new rule 203A-6.

¹ Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

² *Id.*

³ See 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)] at II.E.1 ("Implementing Release").

⁴ Colorado, Iowa and Wyoming also did not have investment adviser statutes at the time Congress enacted the Coordination Act. The Commission recently amended Schedule I to Form ADV necessitated by the enactment of investment adviser statutes in both Colorado and Iowa. Technical Changes to Schedule I to Form ADV, Investment Advisers Act Release No. 1733A (Jan. 7, 1999).

⁵ H.B. 695, 122d Gen. Ass., Reg. Sess. (Ohio 1997-1998).

⁶ See Letter from Thomas E. Geyer, Commissioner, Ohio Division of Securities, dated September 25, 1998 (available in File No. S7-2-99).

⁷ Section 203A(b) of the Act [15 U.S.C. 80b-3a(b)] preempts state laws that would require the registration, qualification and licensing of investment advisers registered with the Commission. See Implementing Release, *supra* note 3 at II.H.1.

II. Discussion

Under the proposed rule, new Ohio advisers (i.e., those advisers that are not currently registered with the Commission) that would not be eligible for Commission registration would register with the Ohio Division of Securities on or after the effective date of Ohio's implementing rules.⁸ Smaller Ohio advisers that are currently registered with the Commission would switch over to registration with the Ohio Division of Securities during a one year transition period.⁹ These advisers could withdraw their Commission registration at the time they register with the Ohio Division of Securities, or by the end of the transition period.¹⁰

With the enactment of the Ohio law, smaller Ohio advisers may no longer rely on the location of their principal office and place of business as a basis for Commission registration. The Commission therefore is proposing to amend Schedule I by deleting the references to Ohio from both Schedule I and the Instructions to Schedule I. As a result of the proposed amendments to Schedule I, advisers would no longer be able to claim eligibility for Commission registration based on the location of their principal office and place of business in Ohio and must withdraw from Commission registration, unless otherwise eligible.¹¹ The amendments to Schedule I would become effective on December 31, 1999.

III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form changes that are the subject of this release, to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters

⁸ The Ohio Division of Securities estimates that its implementing rules would be effective by March 31, 1999.

⁹ In addition, advisers ineligible for Commission registration may be required to register with other state securities authorities. See Section 222(d) of the Advisers Act [15 U.S.C. 80b-22(d)] (the national de minimis standard). The timing of an investment adviser's state registration obligations would be governed by state law.

¹⁰ Proposed rule 203A-6(b). We recognize that Ohio investment advisers may be registered with, and regulated by, both the Ohio Division of Securities and the Commission until the advisers withdraw from Commission registration. During this time, Ohio investment advisers may be subject to both federal and state regulatory requirements. Ohio investment advisers no longer eligible for Commission registration may withdraw from Commission registration at any time and thus avoid dual regulation.

¹¹ The Commission is proposing to require smaller Ohio advisers to withdraw from Commission registration by March 30, 2000. Proposed rule 203A-6(b).

suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996, discussed below, the Commission also is requesting information regarding the potential impact of the proposed rule and Schedule I amendment on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

The proposed rule and form amendment are designed to facilitate the transition of certain advisers from Commission to state registration. This transition would further implement congressional intent to reallocate regulatory responsibilities for investment advisers between the Commission and state securities authorities.

Proposed rule 203A-6 would not have a significant effect on the regulatory burden borne by investment advisers. The Coordination Act imposes certain costs on advisers as a consequence of no longer being registered with the Commission, and, at the same time, confers benefits on these advisers, such as no longer requiring them to file amendments to Form ADV with the Commission. The proposed rule does not alter these burdens and benefits, but merely establishes a time by which advisers are required to switch registrations from the Commission to the Ohio Division of Securities.¹² Advisers may withdraw from Commission registration at any time and avoid any potential burdens associated with the proposed rule.

Comment is requested on any costs that may be imposed by the proposed rule and form amendment. Commenters should submit data indicating the cost of filing Schedule I to Form ADV and Form ADV-W. Commenters also should submit data on the expected effects of the proposed rule and form amendment on the customers of investment advisers (such as the amount of fees paid).

Comment is requested on this cost-benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule and form amendment.

¹² Under current rules, advisers that are no longer eligible for Commission registration under section 203A(a) of the Act [15 U.S.C. 80b-3a(a)] must withdraw from registration within 90 days after the date the adviser is required by rule 204-1(a) [17 CFR 275.204-1(a)]. See 17 CFR 279.1 (Schedule I, instruction 6).

V. Paperwork Reduction Act

The proposed amendments to Schedule I to Form ADV contains a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 to 3520], and the Commission has submitted them to the Office of Management and Budget in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Schedule I to Form ADV," under the Advisers Act. Schedule I to Form ADV contains a currently approved collection of information under OMB control number 3235-0490. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Each investment adviser must declare on Schedule I to Form ADV whether it is eligible for Commission registration. The rules imposing this collection of information are found at 17 CFR 275.203-1 and 17 CFR 279.1. Rule 204-1 [17 CFR 275.204-1] requires an investment adviser registered with the Commission to file an amended Schedule I to Form ADV annually within 90 days after the end of the investment adviser's fiscal year. The Commission is proposing amendments to Schedule I only, and not to Form ADV. The burdens associated with this filing are the same as the burdens Form ADV-W imposes on all advisers withdrawing from registration. The proposed withdrawal procedures impose no additional paperwork burdens on advisers. The rule would create a March 30, 2000 deadline by which smaller Ohio advisers must withdraw from Commission registration. Additionally, smaller Ohio advisers may withdraw from Commission registration at any time prior to March 30, 2000 and not be subject to the proposed rule.

Approximately 899 investment advisers with their principal office in Ohio that are registered with the Commission would respond annually to the information requirements of Schedule I. In addition, an estimated 760 new advisers will file Schedule I to Form ADV annually, approximately 83 of which are estimated to have their principal office in Ohio. Of these 83 advisers, an estimated 72 will file Schedule I to Form ADV an average of once a year, and the remaining 11 that rely on the exemption provided by rule 203A-2(d) [17 CFR 275.203A-d] will file Schedule I to Form ADV an average of twice each year. The Commission would receive an estimated 993 total responses from investment advisers with their principal office in Ohio.

The proposed form amendment will not materially alter the number of burden hours for investment advisers with their principal office in Ohio. An estimated 889 advisers with their principal office in Ohio (90.5% of respondents, excluding the estimated ten advisers nationwide expected to rely on the multi-state exemption) either do not need to calculate assets under management to complete Schedule I or calculate assets under management as part of their normal business operations. The burden for these advisers would be 0.75 of an hour (unchanged from previous estimate). For the estimated 93 investment advisers with their principal office in Ohio that must calculate assets under management to complete Schedule I (9.5% of respondents, excluding the estimated ten advisers nationwide expected to rely on the multi-state exemption provided by rule 203A-2(e) [17 CFR 275.203A-2(e)]), compliance with the requirement to file an amended Schedule I would impose a total annual burden for each investment adviser of approximately two hours (unchanged from previous estimate). Schedule I to Form ADV therefore is estimated to impose 852.75 total burden hours on advisers with their principal office in Ohio. This estimate would likely remain constant absent the proposed rule and form amendment.

The collection of information required by Schedule I is mandatory, and responses are not kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop

6-9, Washington, D.C. 20549 with reference to File No. S7-2-99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 203A-6 and amendment to Schedule I to Form ADV. The following summarizes the IRFA.

The IRFA sets forth the statutory authority for the proposed rule and amendment to Schedule I. The IRFA also discusses the effect of the proposed rule and form amendment on small entities. For the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser, under Commission rules, generally is a small entity if (i) it has assets under management of \$25 million or less reported on its most recent Schedule I to Form ADV [17 CFR 279.1]; (ii) it does not have total assets of \$5 million or more on the last day of the most recent fiscal year; and (iii) it is not in a control relationship with another investment adviser that is not a small entity.¹³

The Commission estimates that approximately 1,000 Commission-registered advisers are small entities. Approximately 540 of these small entities have their principal office in Ohio. As explained in the IRFA, the majority of these advisers are smaller Ohio advisers that will be required by the Coordination Act to withdraw from Commission registration and register with the various state securities authorities. Absent Commission rulemaking, the Coordination Act will require smaller Ohio advisers to withdraw from Commission registration after the Ohio law is effective. Relatively few small entities thus would be affected by the proposed rule.

The IRFA states that the proposed rule amendments would impose no new reporting or recordkeeping requirements and would eliminate certain other requirements. The proposed rule would, however, create a deadline for complying with an existing requirement. Smaller Ohio advisers no longer eligible for Commission registration would be required to withdraw from Commission registration by March 30, 2000. These advisers will no longer be required to file an amended

Schedule I with the Commission each year, or the other annual updates to Form ADV.

The proposed rule and rule amendment will not materially alter the time required for investment advisers to comply with these rules.¹⁴ The proposed rule and form amendment also are necessary to implement the Coordination Act with respect to smaller Ohio advisers. The IRFA states that the burden to investment advisers subject to the rule should be outweighed by the benefits to the investment advisers subject to the proposed rule and form amendment.

There are no rules that duplicate, overlap, or conflict with, the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule and form amendment that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule, or any part of the proposed rule, for small entities.

As stated in the IRFA, it would be inconsistent with the Coordination Act to exempt small entities from the proposed rule and form amendment. This determination was made after taking into account the resources available to small entities and the potential burden that could be placed on investment advisers that may no longer be eligible for Commission registration. It does not appear feasible to establish different reporting or compliance requirements or to further clarify, consolidate or simplify the reporting or compliance requirements. The proposed rule and form amendment, as proposed, would not adversely affect small entities. The proposed rule and form amendment, instead, include regulatory alternatives that minimize the effect on small entities.

The IRFA includes information concerning the solicitation of comments

¹⁴ Currently, investment advisers that are required to withdraw from Commission registration because they are no longer eligible under section 203A(a) of the Act [15 U.S.C. 80b-3a(a)] are required to withdraw from registration within 90 days after the date the adviser's Schedule I was required by rule 204-1(a) [17 CFR 275.204-1(a)] to have been filed with the Commission. See Schedule I, instruction 6 [17 CFR 279.1].

with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule and form amendment. A copy of the IRFA may be obtained by contacting Jeffrey O. Himstreet, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5-6, Washington, D.C. 20549.

VII. Statutory Authority

The Commission is proposing new rule 203A-6 pursuant to the authority set forth in section 203(h) [15 U.S.C. 80b-3(h)]; section 203A(c) [15 U.S.C. 80b-3a(c)]; and section 211(a) [15 U.S.C. 80b-11(a)] of the Investment Advisers Act of 1940.

The Commission is proposing amendments to Form ADV pursuant to the authority set forth in section 203(c)(1) [15 U.S.C. 80b-3(c)(1)]; and section 204 [15 U.S.C. 80b-4] of the Investment Advisers Act of 1940.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

For the reasons discussed in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Regulations as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11, unless otherwise noted.

* * * * *

2. Section 275.203A-6 is added to read as follows:

§ 275.203A-6 Transition period for Ohio investment advisers.

(a) *Ohio authority.* Notwithstanding section 203A(b) of the Act [15 U.S.C. 80b-3a(b)], the Ohio Revised Code, sections 1707.01 to 1707.99, is effective with respect to an investment adviser registered with the Commission that, but for having its principal office and place of business in Ohio, would be prohibited from registering with the Commission under section 203A of the Act [15 U.S.C. 80b-3a].

(b) *Withdrawal required.* Every investment adviser that is registered with the Commission solely because its principal office and place of business is located in Ohio must withdraw from Commission registration by March 30, 2000.

¹³ Rule 0-7 [17 CFR 275.0-7].

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

3. 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.*

4. By amending Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio" and by amending the Instructions to Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio".

Note: The text of Schedule I to Form ADV [§ 279.1] does not and the amendments will not appear in the Code of Federal Regulations.

Dated: January 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2703 Filed 2-4-99; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1215-AB09

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: This document extends the period for filing comments regarding a proposed rule to implement recent legislation and clarify existing Departmental rules relating to the temporary employment in the United States of nonimmigrants under H-1B visas (20 CFR part 655), and provides an opportunity for additional comments to implement an ACWIA provision which modifies the methodology for the determination of the prevailing wage under the Permanent Labor Certification program (20 CFR part 656).

DATES: Comments must be received on or before February 19, 1999.

ADDRESSES: Submit written comments concerning Part 655 to Deputy

Administrator, Wage and Hour Division, ATTN: Immigration Team, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile ("FAX") machine to (202) 693-1432. This is not a toll free number.

Submit written comments concerning Part 656 to the Assistant Secretary for Employment and Training, ATTN: Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile ("FAX") machine to (202) 208-5844. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: On part 655, contact either of the following:

Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3510, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693-0745 (this is not a toll-free number).

James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219-5263 (this is not a toll-free number).

On Part 656, contact James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219-5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1999 (64 FR 628), the Department of Labor published a proposed rule intended to revise 20 CFR parts 655 and 656 which concern Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models, and the Labor Certification Process for Permanent Employment of Aliens in the United States.

Specifically, the Department published this notice of proposed rulemaking to obtain public comment

on issues to be addressed in regulations to implement changes made to the Immigration and Nationality Act (INA) by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). In addition, the Department is providing an opportunity for additional comments on certain provisions which were previously published for comment as a Proposed Rule in 1995 (60 FR 55339).

The Department also proposed to modify regulations to implement an ACWIA provision which modifies the methodology for the determination of the prevailing wage under the Permanent Labor Certification program (20 CFR part 656). This methodology is also applicable to prevailing wages for the H-1B program. After receiving public comments on this notice of proposed rulemaking, the Department plans to publish an Interim Final Rule (inviting further comment) and a Final Rule (after reviewing all the comments received).

Because of the continuing interest in this proposal, the agency believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 20 CFR parts 655 and 656, is extended to February 19, 1999.

Signed at Washington, DC, this 2nd day of February, 1999.

Raymond J. Uhalde,

Deputy Assistant Secretary for Employment and Training, Employment and Training Administration.

John R. Fraser,

Deputy Administrator, Wage and Hour Division, Employment Standards Administration.

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DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 50 and 51

[Public Notice 2961]

Nationality Procedures—Report of Birth Regulation; Passport Procedures—Revocation or Restriction of Passports Regulation

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations to add new grounds for denying, revoking or canceling a passport, and for canceling a Consular Report of Birth. The proposed rule