



Special Alert

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Internet Adviser Registration Reforms



On March 27, 2024 the Securities and Exchange Commission (“SEC”) adopted amendments to Rule 203A-2(e) under the Investment Advisers Act of 1940 (the “Advisers Act”). Rule 203A-2(e) provides an exemption from the prohibition on registration with the SEC that may otherwise affect certain internet based advisers seeking to register with the SEC. Rule 203A-2(e) is referred to as the Internet Adviser Exemption.

Under the revised Internet Adviser Exemption, an investment adviser will be required to provide investment advice to all of its clients exclusively through an “operational interactive website” at all times during which the adviser relies on the Internet Adviser Exemption. In addition, as revised, the Internet Adviser Exemption eliminates the de minimis exception in the current rule that permits internet advisers to have fewer than 15 non-internet clients in the preceding 12- month period. Furthermore, the revised Internet Adviser Exemption provides for conforming amendments to Form ADV.

Investment Advice Through an Operational Interactive Website

The Internet Adviser Exemption defines “interactive website” to mean a website, mobile application or similar digital platform, through which the investment adviser provides “digital investment advisory services” on an “ongoing basis” to more than one client, except during temporary technological outages of a de minimis duration. The Internet Adviser Exemption defines “digital investment advisory service” as investment advice that is generated by the operational interactive website’s software-based models, algorithms or applications based on personal information each client supplies through the operational interactive website.

Digital Investment Advisory Service

The definition of “digital investment advisory service” is meant to require that an adviser provide investment advice exclusively through an interactive website. The investment advice to clients must be “generated by” the website’s software-based models, algorithms or applications. As provided in the Adopting Release, the Internet Adviser Exemption is designed so that an adviser’s personnel do not generate, modify or provide client-specific advice through the operational interactive website or otherwise. The Adopting Release further provides that human-directed client-specific investment advice, even if delivered through electronic means, would not be eligible activity under the Internet Adviser Exemption.

Personnel of an internet investment adviser are not prohibited from all interactions with clients. In the Adopting Release the SEC provides that advisory personnel can continue to assist clients with technical issues or collect feedback in connection with use of the website. Also, adviser personnel can assist clients by explaining how the digital investment advisory services were developed or how the software or algorithms operate. Furthermore, the SEC says in the Adopting Release that personnel of the adviser should be able to provide these services through email, live electronic chats and other forms of electronic communications.

Ongoing Basis

An adviser providing comprehensive discretionary and continual advice to a retail client will be providing advice to a client on an “ongoing basis.” As an example of comprehensive discretionary advice, the Adopting Release for the Internet Adviser Exemption references “monitoring and periodically adjusting a portfolio of equity and fixed income investments with limited restrictions on allocation.” In addition, the Adopting Release references the provision of a one-time financial plan for a one-time fee, and provides that upon the completion of this one time service, the investment adviser would not be providing advice to this former client on an ongoing basis.



Elimination of the De Minimis Non-Internet Client Exception

The revised Internet Adviser Exemption eliminates the exception that permitted an internet investment adviser to provide investment advice to fewer than 15 non-internet clients during the preceding 12 months. Therefore, under the revised Internet Adviser Exemption, an internet adviser must provide advice to all of its client exclusively through an operational interactive website.

Form ADV Amendments

Form ADV Part 1A will be amended to integrate the revisions to the Internet Adviser Exemption. Advisers relying on this exemption will be required to make attestations on Schedule D Section 2.A.(11) regarding their qualification for the exemption.

Compliance Date

The compliance date for the revised Internet Adviser Exemption is March 31, 2025. An adviser relying on this exemption must comply with the conditions and include the representations regarding its eligibility in its Form ADV Part 1A filing. The compliance date reflects, for most advisers, the Form ADV annual update filing deadline. An adviser no longer eligible to rely on the revised Internet Adviser Exemption, and does not otherwise have a basis for SEC registration, must register in one or more states and withdraw its SEC registration by June 29, 2025.

Questions? Contact the DCS Team

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