

§ 275.204-4

17 CFR Ch. II (4-1-12 Edition)

(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 prevent submission of a filing to the IARD, 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 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.

(f) *Final report.* You must file a final report in accordance with instructions in Form ADV when:

(1) You cease operation as an investment adviser;

(2) You no longer meet the definition of exempt reporting adviser under paragraph (a); or

(3) You apply for registration with the Commission.

NOTE TO PARAGRAPH (f): You do not have to pay a filing fee to file a final report on Form ADV through the IARD.

[76 FR 43013, July 19, 2011]

§ 275.204(b)-1 Reporting by investment advisers to private funds.

(a) *Reporting by investment advisers to private funds on Form PF.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), you act as an investment adviser to one or

more private funds and, as of the end of your most recently completed fiscal year, you managed private fund assets of at least \$150 million, you must complete and file a report on Form PF (17 CFR 279.9) by following the instructions in the Form, which specify the information that an investment adviser must provide. Your initial report on Form PF is due no later than the last day on which your next update would be timely in accordance with paragraph (e) if you had previously filed the Form; provided that you are not required to file Form PF with respect to any fiscal quarter or fiscal year ending prior to the date on which your registration becomes effective.

(b) *Electronic filing.* You must file Form PF electronically with the Form PF filing system on the Investment Adviser Registration Depository (IARD).

NOTE TO PARAGRAPH (b): Information on how to file Form PF is available on the Commission's Web site at <http://www.sec.gov/iard>.

(c) *When filed.* Each Form PF is considered filed with the Commission upon acceptance by the Form PF filing system.

(d) *Filing fees.* You must pay the operator of the Form PF filing system a filing fee as required by the instructions to Form PF. The Commission has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed Form PF will not be accepted by the operator of the Form PF filing system, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Updates to Form PF.* You must file an updated Form PF:

(1) At least annually, no later than the date specified in the instructions to Form PF; and

(2) More frequently, if required by the instructions to Form PF. You must file all updated reports electronically with the Form PF filing system.

(f) *Temporary hardship exemption.* (1) If you have unanticipated technical difficulties that prevent you from submitting Form PF on a timely basis through the Form PF filing system, you may request a temporary hardship exemption from the requirements of this section to file electronically.

(2) To request a temporary hardship exemption, you must:

(i) Complete and file in paper format, in accordance with the instructions to Form PF, Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption, no later than one business day after the electronic Form PF filing was due; and

(ii) Submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

(3) The temporary hardship exemption will be granted when you file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption.

(4) The hardship exemptions available under § 275.203-3 do not apply to Form PF.

(g) *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) *Private fund assets* means the investment adviser's assets under management attributable to private funds.

[76 FR 71174, Nov. 16, 2011]

§ 275.204A-1 Investment adviser codes of ethics.

(a) *Adoption of code of ethics.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), you must establish, maintain and enforce a written code of ethics that, at a minimum, includes:

(1) A standard (or standards) of business conduct that you require of your supervised persons, which standard must reflect your fiduciary obligations and those of your supervised persons;

(2) Provisions requiring your supervised persons to comply with applicable Federal securities laws;

(3) Provisions that require all of your access persons to report, and you to review, their personal securities transactions and holdings periodically as provided below;