

NOTE TO PARAGRAPH (b)(2): The Commission has proposed, but not adopted, substantial changes to Part II of Form ADV. Thus, the rules for preparing, delivering, and offering Part II (or a brochure containing at least the information contained in Part II) have not changed. If you are an SEC-registered adviser, however, you no longer have to file Part II with the Commission. Instead, you must keep a copy in your files, and update the information in your Part II whenever it becomes materially inaccurate. State law may continue to require you to file Part II with the appropriate State securities authority on paper, regardless of whether you are filing Part I on paper or through the IARD.

(c) *When filed.* Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

(d) *Filing fees.* You must pay NASD Regulation, Inc. (NASDR) (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 application for registration will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

[65 FR 57448, Sept. 22, 2000; 65 FR 81737, Dec. 27, 2000]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 275.203-2 Withdrawal from investment adviser registration.

(a) *Form ADV-W.* You must file Form ADV-W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

(b) *Electronic filing.* Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV-W you file must be filed with the IARD, unless you have received a hardship exemption under § 275.203-3.

(c) *Effective date—upon filing.* Each Form ADV-W filed under this section is effective upon acceptance by the IARD, provided however that your investment adviser registration will continue for a period of sixty days after acceptance solely for the purpose of

commencing a proceeding under section 203(e) of the Act (15 U.S.C. 80b-3(e)).

(d) *Filing fees.* You do not have to pay a fee to file Form ADV-W through the IARD.

(e) *Form ADV-W is a report.* Each Form ADV-W required to be filed under this section is a “report” within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b-4 and 80b-7).

[65 FR 57449, Sept. 22, 2000]

§ 275.203-3 Hardship exemptions.

This section provides two “hardship exemptions” from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

(a) *Temporary hardship exemption—(1) Eligibility for exemption.* If you are registered or are registering with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, 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 with 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.

(b) *Continuing hardship exemption—(1) Eligibility for exemption.* If you are a “small business” (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption.

The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures.* To apply for a continuing hardship exemption,

§ 275.203(b)(3)-1

17 CFR Ch. II (4-1-03 Edition)

you must file Form ADV-H at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after you file Form ADV-H.

(3) *Effective date—upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to NASD Regulation, Inc. in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business.* You are a “small business” for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked “no” to each question in Item 12 that you were required to answer.

NOTE TO PARAGRAPH (b): NASDR will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

[65 FR 57449, Sept. 22, 2000; 65 FR 81738, Dec. 27, 2000]

§ 275.203(b)(3)-1 Definition of “client” of an investment adviser.

PRELIMINARY NOTE TO § 203(b)(3)-1 This rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act.

(a) *General.* For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)), the following are deemed a single client:

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special Rules.* For purposes of this section:

(1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, *Provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization’s assets or similar matters;

(3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(4) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(5) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are United States residents; an investment adviser that has its principal office and place of business in the United States must count all clients.

(c) *Holding Out.* Any investment adviser relying on this section shall not be deemed to be holding itself out generally to the public as an investment