

1970, see section 30 (introductory text and par. (1)) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-3a. State and Federal responsibilities

(a) Advisers subject to State authorities

(1) In general

No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b-3 of this title, unless the investment adviser—

(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter I of this chapter.

(2) Treatment of mid-sized investment advisers

(A) In general

No investment adviser described in subparagraph (B) shall register under section 80b-3 of this title, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a-53], and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 80b-3 of this title.

(B) Covered persons

An investment adviser described in this subparagraph is an investment adviser that—

(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

(ii) has assets under management between—

(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

(II) \$100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter.

(3) “Assets under management” defined

For purposes of this subsection, the term “assets under management” means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

(b) Advisers subject to Commission authority

(1) In general

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

(A) that is registered under section 80b-3 of this title as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State; or

(B) that is not registered under section 80b-3 of this title because that person is excepted from the definition of an investment adviser under section 80b-2(a)(11) of this title.

(2) Limitation

Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any State from investigating and bringing enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

(c) Exemptions

Notwithstanding subsection (a) of this section, the Commission, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the Commission of any person or class of persons to which the application of subsection (a) of this section would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section.

(d) State assistance

Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of investment advisers by the State.

(Aug. 22, 1940, ch. 686, title II, §203A, as added Pub. L. 104-290, title III, §303(a), Oct. 11, 1996, 110 Stat. 3437; amended Pub. L. 109-290, §7(b)(1), Sept. 29, 2006, 120 Stat. 1321; Pub. L. 111-203, title IV, §410, July 21, 2010, 124 Stat. 1576.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(2), (3). Pub. L. 111-203 added par. (2) and redesignated former par. (2) as (3).

2006—Subsecs. (d), (e). Pub. L. 109-290 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: “The Commission may, by rule, require an investment adviser—

“(1) to file with the Commission any fee, application, report, or notice required by this subchapter or by the rules issued under this subchapter through any entity designated by the Commission for that purpose; and

“(2) to pay the reasonable costs associated with such filing.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111-203, set out as a note under section 80b-2 of this title.

EFFECTIVE DATE

Section effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104-290, as amended, set out as an Effective Date of 1996 Amendment note under section 80b-2 of this title.

CONTINUED STATE AUTHORITY

Pub. L. 104-290, title III, §307, Oct. 11, 1996, 110 Stat. 3440, provided that:

“(a) PRESERVATION OF FILING REQUIREMENTS.—Nothing in this title [see Short Title of 1996 Amendment note set out under section 80b-20 of this title] or any amendment made by this title prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any documents filed with the Commission pursuant to the securities laws solely for notice purposes, together with a consent to service of process and any required fee.

“(b) PRESERVATION OF FEES.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of this Act [Oct. 11, 1996], filing, registration, or licensing fees shall, notwithstanding the amendments made by this title, continue to be paid in amounts determined pursuant to the law, rule, regulation, or order, or other administrative action as in effect on the day before such date of enactment.

“(c) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

“(1) IN GENERAL.—During the period beginning on the date of enactment of this Act [Oct. 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require registration of any investment adviser that fails or refuses to pay the fees required by subsection (b) in or to such State, notwithstanding the limitations on the laws, rules, regulations, or orders, or other administrative actions of any State, or any political subdivision thereof, contained in subsection (a), if the laws of such State require registration of investment advisers.

“(2) DELAYS.—For purposes of this subsection, delays in payment of fees or underpayments of fees that are promptly remedied in accordance with the applicable laws, rules, regulations, or orders, or other administrative actions of the relevant State shall not constitute a failure or refusal to pay fees.”

§ 80b-4. Reports by investment advisers

(a) In general

Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other

than one specifically exempted from registration pursuant to section 80b-3(b) of this title), shall make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(b) Records and reports of private funds

(1) In general

The Commission may require any investment adviser registered under this subchapter—

(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the “Council”); and

(B) to provide or make available to the Council those reports or records or the information contained therein.

(2) Treatment of records

The records and reports of any private fund to which an investment adviser registered under this subchapter provides investment advice shall be deemed to be the records and reports of the investment adviser.

(3) Required information

The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

(B) counterparty credit risk exposure;

(C) trading and investment positions;

(D) valuation policies and practices of the fund;

(E) types of assets held;

(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

(G) trading practices; and

(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

(4) Maintenance of records

An investment adviser registered under this subchapter shall maintain such records of pri-