

vided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86-750, § 4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement's continuation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86-750, § 5, substituted "existence" for "business".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(b), 929P(a)(4), and 985(e)(1) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by sections 403, 407, and 408 of 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 OF 1996 AMENDMENT

Amendment by sections 303(b), (d) and 305 of Pub. L. 104-290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104-290, as amended, set out as a note under section 80b-2 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-62 applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104-62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in section 80a-3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104-62, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, except that amendment by section 24(a) of Pub. L. 91-547 effective on expiration of one year after Dec. 14, 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;

(B) that is not registered under section 80b-3 of this title because that person is exempt from the definition of an investment adviser under section 80b-2(a)(11) of this title; or¹

(C) that is not registered under section 80b-3 of this title because that person is exempt from registration as provided in subsection (b)(7) of such section, or is a supervised person of such person; or

(D) that is not registered under section 80b-3 of this title because that person is exempt from registration as provided in subsection (b)(8) of such section, or is a supervised person of such person.

(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), 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) 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; Pub. L. 114-94, div. G, title LXXIV, §74003, Dec. 4, 2015, 129 Stat. 1786; Pub. L. 115-417, §3, Jan. 3, 2019, 132 Stat. 5439.)

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

2019—Subsec. (b)(1)(D). Pub. L. 115-417 added subpar. (D).

2015—Subsec. (b)(1)(C). Pub. L. 114-94 added subpar. (C).

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 So in original. The word “or” probably should not appear.

“(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 private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(5) Filing of records

The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

(6) Examination of records

(A) Periodic and special examinations

The Commission—

(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this subchapter in accordance with a schedule established by the Commission; and

(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(B) Availability of records

An investment adviser registered under this subchapter shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

(7) Information sharing

(A) In general

The Commission shall make available to the Council copies of all reports, documents,