

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 279

Release No. IA-4698

Technical Amendments to Form ADV and Form ADV-W

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (the “Commission” or “SEC”) is making technical amendments to Form ADV under the Investment Advisers Act of 1940 (“Advisers Act”) to reflect the enactment of a Wyoming state law regulating investment advisers. Form ADV is the form advisers use to register with the Commission and the state securities regulatory authorities. The Commission is also making similar amendments to Form ADV-W, the form advisers use to withdraw from registration with the Commission or the states.

DATES: Effective July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Bridget D. Farrell, Senior Counsel or Melissa Rovers Harke, Senior Special Counsel at (202) 551-6787 or IArules@sec.gov, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting technical amendments to Form ADV [17 CFR 279.1] and Form ADV-W [17 CFR 279.2] under the Advisers Act to correct and update what will be outdated references in those forms to the

state of Wyoming due to the enactment by Wyoming of legislation regulating investment advisers, which will be effective as of July 1, 2017.¹

An investment adviser must register with the Commission unless it is prohibited from registering under section 203A of the Advisers Act or relies on an exemption from registration under section 203.² Under section 203A(a)(1) of the Advisers Act, an 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 is prohibited from registering with the Commission unless the adviser has assets under management of not less than \$25 million, or advises an investment company registered under the Investment Company Act of 1940.³ Under section 203A(a)(2) of the Advisers Act, an investment adviser with between \$25 million and \$100 million of assets under management ("mid-sized adviser") is also prohibited from registering with the Commission if that adviser is required to be registered as an investment adviser in 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.⁴ These provisions make the states the primary regulators of smaller advisers and the Commission the primary regulator of larger advisers.⁵ However,

¹ Wyoming Uniform Securities Act, Wyo. Stat. Ann. §§ 17-4-101, 17-4-403 through 17-4-412 (effective July 1, 2017) ("Wyoming Securities Act").

² 15 U.S.C. 80b-3a; 15 U.S.C. 80b-3.

³ 15 U.S.C. 80b-3a(a)(1).

⁴ 15 U.S.C. 80b-3a(a)(2). Section 203A(a)(2) also provides exceptions to the prohibition on Commission registration of state-registered mid-sized advisers for advisers to registered investment companies or business development companies under the Investment Company Act of 1940 and advisers that would otherwise be required to register with 15 or more states.

⁵ See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)].

all investment advisers - regardless of the amount of assets they manage - must register with the Commission if their principal office and place of business is located in a state that has not enacted a statute regulating advisers.⁶

Recently, the state of Wyoming enacted a statute regulating investment advisers that will become effective July 1, 2017.⁷ Further, our staff has contacted the state securities authority for the state of Wyoming, the Wyoming Secretary of State Compliance Division, which has advised our staff that mid-sized advisers with a principal office and place of business in Wyoming will be required to be registered with the state and will be subject to examination. As a consequence, by operation of the Wyoming statute, as of July 1, 2017, an investment adviser with a principal office and place of business in Wyoming may not register with the Commission unless it has greater than \$100 million in assets under management, advises a registered investment company, or is eligible to rely on one of the exemptions from the prohibition on registration contained in rule 203A-2.⁸

As a result of this Wyoming statute, the Commission is making technical amendments to Form ADV as well as to Form ADV-W to reflect the addition of the state of Wyoming to the group of states with investment adviser regulation. Specifically, any adviser filing an initial Form ADV or an amendment to an existing Form ADV on or after

⁶ See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633, section I (May 15, 1997) [62 FR 28112 (May 22, 1997)].

⁷ Wyoming Securities Act §§ 17-4-403 - 412.

⁸ Absent eligibility for Commission registration, these advisers are subject to the registration provisions of Wyoming law. In addition, advisers ineligible for Commission registration that have their principal office and place of business in Wyoming may be required to register in one or more other states, subject to the laws of those states.

July 1, 2017 will not be able to select Item 2.A.(3) of Form ADV, which currently indicates having a principal office and place of business in Wyoming (which does not regulate advisers) as a basis for Commission registration. Further, a checkbox for "WY" will be added to Item 2.C. of Form ADV to enable state notice filings for Commission-registered advisers. Finally, a checkbox for "WY" will also be added to section (b) of Form ADV-W, concerning withdrawals from state investment adviser registration.⁹ On October 1, 2017, Item 2.A.(3) will be redesignated as "Reserved." The same change will be made to Schedule R, Section 2.A.(3) for relying advisers.¹⁰

PROCEDURAL AND OTHER MATTERS

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when the agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."¹¹ The Commission is adopting technical amendments to correct and eliminate what will automatically become outdated provisions in Part 1A of Form ADV and Form ADV-W as a result of legislation enacted by the state of Wyoming, which will be effective July 1, 2017. These amendments are therefore ministerial in nature. Accordingly, the

⁹ Item 2.A.(3) on Form ADV will be disabled as a basis for registration in the Investment Adviser Registration Depository ("IARD") on July 1, 2017, when the Wyoming statute becomes effective. Additionally, on that date, IARD will be programmed to accept Wyoming notice filings, and to enable withdrawal from Wyoming registration. However, IARD will not be programmed to replace the text in Item 2.A.(3) with "Reserved" or to make the amendments to Schedule R discussed in this paragraph until October 1, 2017, in order to implement those amendments concurrently with the unrelated amendments to the form adopted recently. See Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4509 (Aug. 25, 2016) ("Release 4509") [81 FR 60418 (Sept. 1, 2016)] (compliance date October 1, 2017).

¹⁰ Schedule R is a schedule to Form ADV that may be used by private fund advisers that are registered with the Commission and operate a single advisory business through multiple legal entities to file a single registration form, subject to conditions. See Release 4509.

¹¹ 5 U.S.C. 553(b).

Commission finds good cause that publishing the amendments for comment is unnecessary.¹²

We do not believe that these ministerial amendments to Forms ADV and ADV-W, to reflect the addition of Wyoming to the group of states with investment adviser regulation, make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).¹³ Accordingly, we are not revising any burden and cost estimates in connection with these amendments.¹⁴

ECONOMIC ANALYSIS

As a result of the Wyoming statute, and its interaction with the Advisers Act and rules thereunder, small and mid-sized investment advisers who have a principal office and place of business in Wyoming, and cannot assert another basis for continuing to remain registered with the Commission, will be required to register with the Wyoming Secretary of State, deregister with the Commission, and be subject to Wyoming oversight

¹² The amendments also do not require analysis under the Regulatory Flexibility Act (“RFA”). See 5 U.S.C. 601(2) (for purposes of RFA analysis, the term “rule” generally means any rule for which the agency publishes a general notice of proposed rulemaking).

¹³ 44 U.S.C. 3501 et seq. As noted in the Economic Analysis below, we recognize that approximately 35 investment advisers would likely be affected by the new Wyoming state law. Thus, while the enactment of the Wyoming state law may impact a small number of Commission-registered small and mid-sized investment advisers that have a principal office and place of business in Wyoming, we believe that the amendments adopted today do not impose substantive new burdens as they may marginally reduce the overall population of respondents and therefore will not affect the current overall burden estimates for affected forms.

¹⁴ The most recent Paperwork Reduction Act analysis for Form ADV, which is pending approval by the Office of Management and Budget (OMB Control No. 3235-0049), is based upon the number of registered advisers and exempt reporting advisers as of May 1, 2016.

as of July 1, 2017.¹⁵ This transition of these Commission-registered investment advisers to Wyoming oversight is a result of a Wyoming statute and therefore does not necessitate additional rule changes by the Commission, but will cause Forms ADV and ADV-W to contain outdated provisions that reflect the prior status of Wyoming investment advisers who had been able to register with the Commission before July 1, 2017. This rulemaking updates those forms accordingly. In considering the economic effects of this rulemaking, we primarily focus on any effects that changes to the forms might have on Commission-registered advisers filing Form ADV and ADV-W. However, we recognize that we are making these changes to the forms in light of the broader transition of certain Wyoming investment advisers to Wyoming oversight — a transition that will entail a set of economic effects separate from the changes to the forms — and we briefly discuss the effects of this broader transition.

As of February 1, 2017, there are 40 investment advisers that selected Item 2.A.(3) of Form ADV, indicating that the adviser has a principal office and place of business in the state of Wyoming. Of these 40 investment advisers, four advisers have identified themselves as those with regulatory assets under management of \$100 million or more by checking Item 2.A.(1) on Form ADV and will continue to be required to register with the Commission, regardless of the change in the statute enacted by the state of Wyoming. However, based on regulatory assets under management (Item 5.F.(2)(c) on Form ADV), there is one additional adviser with regulatory assets under management of \$100 million or more that did not identify itself by Item 2.A.(1) that we therefore

¹⁵ Specifically, for small investment advisers, the impact of the transition to state oversight is the result of the interaction of the Wyoming statute with section 203A(a) and our 1997 rule, see *supra* note 6; for mid-sized investment advisers, it is the result of section 203A(a) as amended by Section 410 of the Dodd-Frank Act, and our 2011 rule, see *supra* note 5.

anticipate would remain registered with the Commission. Only one adviser currently selecting Item 2.A.(3) also selected Item 2.A.(2) on Form ADV as of February 1, 2017, indicating that it is a “mid-sized adviser” with regulatory assets under management of more than \$25 million but less than \$100 million; however, based on regulatory assets under management, we identified seven additional mid-sized advisers that did not select Item 2.A.(2). We anticipate these eight advisers would need to change their registrations to state registration, absent an alternative basis for remaining registered with the Commission. The remaining 27 advisers report regulatory assets under management of less than \$25 million and checked only Item 2.A.(3) as a basis for registration with the Commission and would need to change their registrations to state registration absent an alternative basis for remaining registered with the Commission.

Thus, there are approximately 35 advisers that have not indicated an alternative basis for remaining registered with the Commission after the Wyoming statute becomes effective on July 1, 2017,¹⁶ and that we therefore assume will be required to register with the state of Wyoming and withdraw from registration with the Commission.¹⁷ These 35 investment advisers collectively reported \$530 million in regulatory assets under management as of February 1, 2017.

¹⁶ We arrive at 35 mid-sized and small advisers by two means. First, we take the 40 Wyoming advisers and subtract the five advisers who either have checked the large-size box (Item 2.A.(1)) or who have assets under management that would seem to permit them to check Item 2.A.(1). Alternatively, we sum together the adviser who checked the mid-sized box (Item 2.A.(2)) together with firms that have assets under management that would appear to make them mid-sized (seven), as well as those that have assets under management that would seem to make them small advisers (27), none of which have checked any additional box that would constitute an alternative basis for remaining registered.

¹⁷ As these 35 small and mid-sized advisers may have an alternative basis for remaining registered with the Commission (e.g., they serve as an adviser to a registered investment company or business development company, or are a pension consultant), 35 is likely to be an upper bound; however, we assume that all 35 advisers will be required to shift for purposes of understanding the possible magnitude of the change.

The Commission has analyzed the effects of the changes to the forms as a result of the Wyoming legislation and anticipates only nominal benefits or costs, if any, to arise from the technical amendments to Form ADV and Form ADV-W to reflect the change in Wyoming law. The removal of Item 2.A.(3) from Form ADV will prevent investment advisers from improperly checking the box previously used to identify investment advisers from the state of Wyoming, making clear to such advisers that they are no longer eligible to register with the Commission on the basis of having a principal office and place of business in Wyoming. Correspondingly, amendments to Schedule R of Form ADV to remove Item 2.A.(3) from the Schedule will have effects for relying advisers subject to umbrella registration similar to the effects for advisers that do not use Schedule R but respond to Item 2.A.(3) of Form ADV. Further, Item 2.C of Form ADV will now be amended to include Wyoming check boxes for Commission-registered advisers to send notice filings to Wyoming. Finally, Form ADV-W will be revised to allow Wyoming registrants to withdraw their registration with Wyoming as necessary.

As Item 2.A.(3) would not be relevant to investment advisers without a principal office and place of business in the state of Wyoming, we do not believe that changes to the forms will impose any costs on these investment advisers to update their systems or otherwise review or understand the impact of the changes.¹⁸ While some advisers that remain registered with the Commission may need to check the notice filing box to send notice filings to Wyoming, we anticipate that the burden to check the box will be nominal, if any. The changes to the forms also do not directly impose any costs on the

¹⁸ To the extent that filers have fewer questions to research when completing the form, this removal of Item 2.A.(3) may reduce the costs associated with filing activities for investment advisers with a principal office and place of business in the state of Wyoming.

advisers who must change their registration as a result of the Wyoming statute. The Commission further anticipates that these technical amendments to Form ADV and Form ADV-W will have minimal, if any, effects on efficiency, competition, or capital formation because the amendments reflect only ministerial changes to Forms ADV and ADV-W.

Separately, we recognize that approximately 35 investment advisers will be required to transition to Wyoming oversight as a self-executing result of the Wyoming statute's interaction with our existing statutes and rules. We acknowledge that this transition resulting from the Wyoming statute will have economic effects on these entities. In our 2011 rule implementing Section 410 of the Dodd-Frank Act, which transitioned mid-sized investment advisers to state oversight, we discussed certain economic effects that result from transitioning a class of advisers from federal to state oversight.¹⁹ These economic effects include costs incurred by transitioning advisers to make the necessary filings to register with the state and to withdraw from Commission registration,²⁰ and to comply with the state's ongoing reporting and inspections regime. Similarly, Wyoming advisers will be required to calculate and monitor assets under management going forward to determine if Commission registration (or deregistration, for those currently exceeding the threshold) would be required. At the same time, these advisers transitioning as a result of the Wyoming statute may experience cost savings associated with no longer being subject to the Commission's regulatory regime for

¹⁹ See supra note 5.

²⁰ "The state" here principally refers to Wyoming. We recognize that advisers transitioning to Wyoming registration may be required to register with additional states as well, which may impose additional costs on such advisers.

registered investment advisers. Because the amendments affect only 35 small to mid-sized advisers that have principal offices and a place of business in the state of Wyoming out of a total 12,176 investment advisers currently filing Form ADV, the Commission does not anticipate that, taken together, these changes would have a significant effect on efficiency, competition, or capital formation.

STATUTORY AUTHORITY

The Commission is adopting technical amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-37(a)], and sections 203(c)(1), 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)].

The Commission is adopting technical amendments to Form ADV-W (17 CFR 279.2) under the authority set forth in sections 203(h), 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(h), 80b-4, and 80b-11)).

List of Subjects in 17 CFR Part 279

Reporting and recordkeeping requirements; Securities.

TEXT OF RULE AND FORM AMENDMENTS

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 279 – FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, et seq.

2. Form ADV [referenced in §279.1] is amended by:

a. Removing the phrase "have your *principal office and place of business in Wyoming* (which does not regulate advisers);" from Part 1A, Item 2.A.(3) and adding in its place "Reserved";

b. Inserting " WY" after " WI" in the table of Part 1A, Item 2.C.; and

c. Removing the phrase "have your *principal office and place of business in Wyoming* (which does not regulate advisers);" from Part 1A, Schedule R, Section 2.A.(3) and adding in its place "Reserved".

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

3. Form ADV-W [referenced in §279.2] is amended by inserting " WY" after " WI" in the table in paragraph (b) of the Status section.

Note: The text of Form ADV-W does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

May 4, 2017

Brent J. Fields
Secretary