

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) "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.)

AMENDMENTS

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

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

Section 307 of title III of Pub. L. 104-290 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) Filing depositories

The Commission may, by rule, require an investment adviser—

(1) to file with the Commission any fee, application, report, or notice required to be filed by this subchapter or 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 and the establishment and maintenance of the systems required by subsection (c).

(c) Access to disciplinary and other information

(1) Maintenance of system to respond to inquiries

(A) In general

The Commission shall require the entity designated by the Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers.

(B) Applicability

This subsection shall apply to any investment adviser (and the persons associated with that adviser), whether the investment adviser is registered with the Commission under section 80b-3 of this title or regulated solely by a State, as described in section 80b-3a of this title.

(2) Recovery of costs

An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual inves-

tors, reasonable fees for responses to inquiries described in paragraph (1).

(3) Limitation on liability

An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(Aug. 22, 1940, ch. 686, title II, §204, 54 Stat. 852; Pub. L. 86-750, §6, Sept. 13, 1960, 74 Stat. 886; Pub. L. 94-29, §29(5), June 4, 1975, 89 Stat. 169; Pub. L. 109-290, §7(a), Sept. 29, 2006, 120 Stat. 1321.)

AMENDMENTS

2006—Pub. L. 109-290 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 94-29 substituted “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” for “make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors”.

1960—Pub. L. 86-750 substituted provisions requiring investment advisers who make business use of the mails or any instrument of interstate commerce, unless exempted from registration by section 80b-3(b) of this title, to keep and preserve accounts, correspondence, memorandums, papers, books, and records, and make such reports as the Commission requires by its rules and regulations, and that these accounts, correspondence, memorandums, papers, books and records shall be subject to examination by representatives of the Commission, for provisions requiring investment advisers registered under section 80b-3 of this title to file annual and special reports in such form as the Commission prescribed by its rules and regulations to keep current the information contained in the registration application.

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.

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-4a. Prevention of misuse of nonpublic information

Every investment adviser subject to section 80b-4 of this title shall establish, maintain, and enforce written policies and procedures reason-