

# S.E.C. REGULATION OF INVESTMENT ADVISERS

PRESENTED BY:  
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## I. APPLICABILITY OF ADVISERS ACT TO ADVISERS AND OTHER FINANCIAL SERVICES PROVIDERS

Section 202(a)(11) of the Advisers Act defines an “adviser as any person who, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in securities, or who promulgates analyses or reports concerning securities.”



**Section 202(a)(11) provides that the definition of investment adviser DOES NOT include:**

- A. a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company;
- B. any lawyer, accountant, engineer or teacher whose performance of such [advisory] services is solely incidental to the practice of his profession;
- C. any broker or dealer whose performance of such [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor;
- D. the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation;
- E. any person whose advise, analyses or reports related to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall be designated by the Secretary of the Exchange Act of 1934, as exempted securities for the purpose of that Act.



## II. EXTENT OF ADVISORY SERVICES ACTUARIES PROVIDE

No “bright line test” as to whether services actuaries may provide will be deemed by the S.E.C. to constitute “investment advisory services.” The S.E.C. will consider the nature and extent of advice, reports, and communication provided to client:

For example, if

- NOT providing specific recommendations as to pension plans, mutual fund providers, or mutual fund families
- NOT taking a traditional “advisory fee” for services

**but it may be deemed an Investment Advisory if...**

- Taking “hourly consulting fees” may constitute “for compensation”
- Promulgating reports and analyses to clients of funds, fund providers, and other Investment Advisers or Pension Consultants
- Engaging in the business of advising others as the advisability of investing in certain securities and the value of securities, and making recommendations regarding client portfolio.

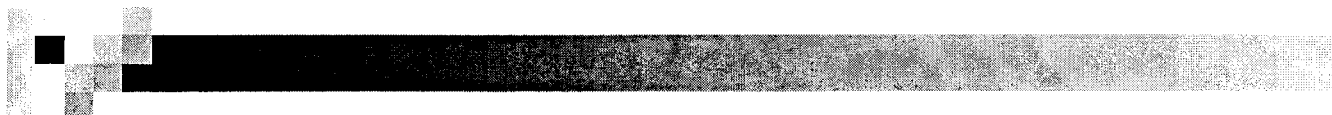


# STATE v. S.E.C. REGISTRATION OF INVESTMENT ADVISERS

## ADVISERS EXEMPT FROM REGISTRATION: SECTION 203(b) and SECTION 203A—STATE-REGULATED ADVISERS WITH LIMITED ASSETS—CERTAIN ADVISERS PERMITTED TO REGISTER WITH THE S.E.C.

Although investment advisers with less than \$25 million in assets under management are generally prohibited from registering with the S.E.C., there are several exceptions to this prohibition:

- **Advisers to Registered Investment Companies**—Section 203A specifically provides that investment advisers to registered investment companies are not covered by its prohibition. As a result, all advisers to registered investment companies must register with the S.E.C.
- **Investment Advisers with Principal Office and Place of Business in a State that does not have an Investment Adviser Statute - Wyoming.**
- **Foreign Investment Advisers Doing Business in the United States**—Unless otherwise exempt, foreign advisers doing business in the U.S. must register with the S.E.C.
- **Pension Consultants with Respect to Pension Plans with at least \$50 Million in Assets**—To rely on Rule 203A-2(b), and thus be able to register with the S.E.C., a pension consultant must provide investment advice (e.g., assistance in selecting and monitoring managers of plan assets, selection of funding vehicles, etc.) to plans with at least \$50 million in assets, although the consultant need not itself have assets under the management. This \$50 million threshold is valued for a 12-month period that ends during the 90 days before the adviser files its Annual Updating Amendment. If a consultant provides advice only to plan participants—rather than to the plan or plan fiduciaries—it would be subject to the \$25 million threshold noted above.

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- **Multi-State Investment Advisers**—Rule 203A-2(e) permits an adviser to register with the S.E.C.—irrespective of the amount of assets under its management—if the adviser would otherwise be required to register with 30 or more state securities authorities.
  - **Internet Investment Advisers**—Rule 203A-2(f) permits an adviser to register with the S.E.C. if the adviser provides investment advice to all of its clients exclusively through an interactive Internet web site (i.e., a web site in which computer software models or applications provide a client with investment advice based on personal information the client supplies through the web site).
  - **Investment Advisers with a Reasonable Expectation of Eligibility**—Rule 203A-2(d) permits a new adviser to register with the S.E.C. if it has a reasonable expectation that, within 120 days of becoming registered, it will be eligible for S.E.C. registration.



### III. DISCUSSION OF INVESTMENT ADVISER'S REGISTRATION AND DISCLOSURE REQUIREMENTS

- Form ADV
- I/A contracts – discretionary or non-discretionary
- CCO and Compliance oversight
- Holding of Client Funds or securities – surprise audit
- Due Diligence re: securities recommended or chosen for client
- Books and Records Retention (Rule 204-2)
- Regulatory Scrutiny (examinations, inspections, inquiries. . .)
- Conflicts of Interest and Fiduciary Duty to clients



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**Securities and Exchange Commission – [www.sec.gov](http://www.sec.gov)**

**Texas State Securities Board – [www.ssb.state.tx.us](http://www.ssb.state.tx.us)**

**North American Securities Administration Association – [www.nasaa.org](http://www.nasaa.org)**