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- > Title 17—Commodity and Securities Exchanges
- > CHAPTER II—SECURITIES AND EXCHANGE COMMISSION
- > PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940
- > § 275.203(m)-1 Private fund adviser exemption.

17 CFR § 275.203(m)-1 - Private fund adviser exemption.

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§ 275.203(m)-1 Private fund adviser exemption.

- (a) *United States investment advisers*. For purposes of section 203(m) of the Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business in the United States is exempt from the requirement to register under section 203 of the Act if the investment adviser:
 - (1) Acts solely as an investment adviser to one or more qualifying private funds; and
 - (2) Manages private fund assets of less than \$150 million.
- (b) Non-United States investment advisers. For purposes of section 203(m) of the Act (15 U.S.C. 80b-3(m)), an investment adviser with its principal office and place of business outside of the United States is exempt from the requirement to register under section 203 of the Act if:
 - (1) The investment adviser has no client that is a United States person except for one or more qualifying private funds; and

- (2) All assets managed by the investment adviser at a <u>place of business in the United States</u> are solely attributable to private fund assets, the total value of which is less than \$150 million.
- **(c)** *Frequency of Calculations.* For purposes of this section, calculate private fund assets annually, in accordance with General Instruction 15 to Form ADV (§ 279.1 of this chapter).
- **(d)** *Definitions.* For purposes of this section:
 - (1) Assets under management means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter), except the following shall be excluded from the definition of assets under management for purposes of this section:
 - (i) The regulatory <u>assets under management</u> attributable to a private fund that is an entity described in subparagraph (A), (B), or (C) of section 203(b)(7) of the Act (15 U.S.C. <u>80b-3(b)(7)</u>) (other than an entity that has elected to be regulated or is regulated as a <u>business development company</u> pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53)); and
 - (ii) The regulatory assets under management attributable to a private fund that is an entity described in subparagraph (A) or (B) of section 203(b)(8) of the Act (15 U.S.C. 80b-3(b)(8)) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53).
 - (2) Place of business has the same meaning as in § 275.222-1(a).
 - **(3)** *Principal office and place of business* of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, <u>control</u>, and coordinate the activities of the investment adviser.
 - **(4)** *Private fund assets* means the investment adviser's <u>assets under management</u> attributable to a qualifying private fund.
 - **(5)** *Qualifying private fund* means any private fund that is not registered under section 8 of the <u>Investment Company Act of 1940 (15 U.S.C. 80a-8)</u> and has not elected to be treated as a <u>business development company</u> pursuant to section 54 of that Act (<u>15 U.S.C. 80a-53</u>). For purposes of this section, an investment adviser may treat as a private fund an <u>issuer</u> that qualifies for an exclusion from the definition of an "investment company," as defined in section 3 of the <u>Investment Company Act of 1940 (15 U.S.C. 80a-3)</u>, in addition to those provided by section 3(c)(1) or 3(c)(7) of

that Act (15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7)), provided that the investment adviser treats the <u>issuer</u> as a private fund under the Act (15 U.S.C. 80b) and the rules thereunder for all purposes.

- **(6)** *Related person* has the same meaning as in § 275.206(4)-2(d)(7).
- (7) *United States* has the same meaning as in § 230.902(I) of this chapter.
- (8) *United States person* means any person that is a U.S. person as defined in § 230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

Note to paragraph (D)(8):

A client will not be considered a United States person if the client was not a United States person at the time of becoming a client.

[76 FR 39703, July 6, 2011, as amended at 83 FR 1302, Jan. 11, 2018; 85 FR 13741, Mar. 10, 2020]



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