

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

Release No. IA-3129; File No. S7-10-00

RIN 3235-AI17

Amendments to Form ADV; Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission is extending the compliance date for Part 2B of Form ADV, the brochure supplement, and for certain rule provisions that relate to the delivery of brochure supplements. The Commission is extending the compliance date generally for four months to provide certain investment advisers additional time to design, test and implement systems and controls to satisfy their obligations to prepare and deliver brochure supplements.

DATES: The effective date for amendments to Part 2 of Form ADV and related rules under the Advisers Act remains October 12, 2010. The compliance date for Form ADV, Part 2B and the provisions of rule 204-3 concerning the delivery of brochure supplements is extended generally for four months as described in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, or Daniel Kahl, Branch Chief, at (202) 551-6787 or IArules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: On July 28, 2010, the Commission adopted amendments to Part 2 of Form ADV [17 CFR 279.1], and related rules under the Investment Advisers Act of 1940 [15 USC 80b] (“Advisers Act”),¹ to require registered investment advisers to provide clients with a brochure and brochure supplements written in plain English (“Adopting Release”).² The brochure contains information about the advisory firm, whereas the brochure supplement contains information about the advisory personnel on whom clients rely for investment advice.

When we adopted amendments to Form ADV last July, we established two separate compliance dates for delivering brochure supplements. New investment adviser registrants, *i.e.*, those that apply for registration on or after January 1, 2011, would begin providing brochure supplements to clients upon registering. Existing investment adviser registrants would provide brochure supplements to new and prospective clients upon filing their annual updating amendment to Form ADV for fiscal year ends beginning on December 31, 2010, and to existing clients within 60 days of filing the annual updating amendment. Most registered advisers have fiscal years ending on December 31 and must, as a result, file an annual updating amendment by March 31, 2011.³ Absent an extension of the compliance date, these advisers would be required to deliver their first brochure supplements to new and prospective clients no later than March 31, 2011 and to existing clients no later than May 31, 2011.

¹ See *e.g.*, rule 204-3 [17 CFR 275.204-3], which requires registered advisers to deliver brochures and brochure supplements.

² *Amendments to Form ADV*, Investment Advisers Act Rel. No. 3060 (July, 28, 2010) [75 FR 49234 (Aug. 12, 2010)].

³ Based on Investment Adviser Registration Depository data as of December 1, 2010, 92% of SEC-registered investment advisers report a December fiscal year end.

We have received correspondence from the Securities Industry and Financial Markets Association (“SIFMA”), requesting that we delay the compliance date for at least an additional four months, until July 31, 2011, solely with respect to requirements regarding delivery of the brochure supplement.⁴ SIFMA asserts that preparing and disseminating brochures with respect to thousands of supervised person to tens of thousands of clients presents its members with substantial logistical challenges in meeting the compliance date. It asserts that its members need additional time to design, test and implement systems and controls that will assure that each client receives an accurate brochure supplement with respect to the supervised person who provides advice to that client.

Based on the concerns expressed in the correspondence, and in light of similar concerns that have been expressed by other investment advisers to our staff, we are persuaded that a limited extension of the compliance date for the delivery of brochure supplements for existing registered advisers is appropriate.⁵ We have based this decision on the information SIFMA has provided and our experience in overseeing the industry. In addition, to provide consistent treatment for newly registering advisers, we are also persuaded that the limited extension of the compliance date for the delivery of brochure supplements is appropriate for these advisers as well. We are not extending the compliance date for the filing and delivery of the brochure required by Part 2A of Form ADV and related rules under the Advisers Act, which is required for newly registering

⁴ Memorandum from Morgan Lewis on behalf of certain SIFMA member firms dated Dec. 16, 2010 available at <http://www.sec.gov/rules/proposed/s71000.shtml>.

⁵ The North American Securities Administrators Association has recommended that the state securities authorities provide the same extension for state-registered investment advisers. However, state-registered advisers should contact the states where they are registered to confirm compliance dates.

investment advisers beginning on January 1, 2011, and for existing registered advisers when they file their annual updating amendments for fiscal years ending on and after December 31, 2010.

Accordingly, the Commission believes it is appropriate to modify and extend the compliance date for brochure supplements for the following investment advisers:⁶

Existing Registered Investment Advisers. All investment advisers registered with the Commission as of December 31, 2010, and having a fiscal year ending on December 31, 2010 through April 30, 2011, have until July 31, 2011, to begin delivering brochure supplements to *new and prospective clients*. These advisers have until September 30, 2011 to deliver brochure supplements to *existing clients*. The compliance dates for delivering brochure supplements for existing registered investment advisers with fiscal years ending after April 30, 2011 remain unchanged.

Newly-registered Investment Advisers. All newly registered investment advisers filing their applications for registration from January 1, 2011 through April 30, 2011, have until May 1, 2011 to begin delivering brochure supplements to *new and prospective clients*. These advisers have until July 1, 2011 to deliver brochure supplements to *existing clients*. The compliance dates for delivering brochure supplements for newly-registered investment advisers filing applications for registration after April 30, 2011 remain unchanged.

The Commission finds that, for good cause and the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for Part 2B of Form ADV and the

⁶ Advisers may choose to deliver brochure supplements earlier than the dates outlined in this release.

provisions of rule 204-3 that relate to the delivery of brochure supplements are impracticable, unnecessary, or contrary to the public interest.⁷ In this regard, the Commission also notes that investment advisers need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly.

By the Commission.

Elizabeth M. Murphy
Secretary

Date: December 28, 2010

⁷ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (“APA”) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impracticable, unnecessary, or contrary to the public interest). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”). Also, because the Regulatory Flexibility Act (5 U.S.C. 601 – 612) only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release. The change to the compliance date is effective upon publication in the Federal Register. This date is less than 30 days after publication in the Federal Register, in accordance with the APA, which allows effectiveness in less than 30 days after publication for “a substantive rule which grants or recognizes an exemption or relieves a restriction.” See 5 U.S.C. 553(d)(1).