

## Investment Management Client Alert |

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### Narrowing the Gap: The SEC Limits Advisers' Internet Exemption



On March 27, 2024, the Securities and Exchange Commission (SEC) adopted amendments to modernize Rule 203A-2(e) (the Internet Adviser Exemption) under the Investment Advisers Act of 1940.<sup>1</sup> As originally adopted, the Internet Adviser Exemption allowed an adviser to register with the SEC if, among other obligations, it provided investment advice to all of its clients exclusively through an interactive website, except such an adviser was permitted to provide investment advice through other means to fewer than 15 clients during the preceding 12 months. The amendments, adopted largely as proposed, generally require that an adviser's website be operational and no longer permit an adviser who provides human-directed advice to rely on the exemption.

In particular, the final rule provides for the following:

- **Operational Interactive Website:** The amendments require an adviser relying on the exemption to provide advice through an "operational interactive website," which is defined as "a website, mobile application or similar digital platform through which the investment adviser provides digital investment advisory services on an ongoing basis to more than one client (except during temporary technological outages of a de minimis duration)."<sup>2</sup> In a change from the proposal, the SEC expanded the definition to include a "similar digital platform" to ensure the rule remains evergreen as technology changes but to also reinforce that qualifying technologies must be ones through which an adviser can provide digital advisory services consistent with the rule.
- **Digital Investment Advisory Service:** The amendments define "digital investment advisory service" as "investment advice to clients generated by the operational interactive website's software-based models, algorithms or applications based on personal information each client supplies through the operational interactive website." This definition is intended to clarify that all investment advice must come from a website's software instead of the internet investment adviser's personnel. Human-directed client-specific investment advice, even if delivered through electronic means, would not be eligible activity under the exemption.<sup>3</sup>

<sup>1</sup> [Exemption for Certain Investment Advisers Operating Through the Internet](#), Investment Advisers Act Release No. 6578, March 27, 2024.

<sup>2</sup> Under the amendments, internet investment advisers may seek exemptive relief from the SEC for technological outages of the operational interactive website that last longer than a de minimis duration.

<sup>3</sup> Generally, advisory personnel can assist clients with technical issues and/or collect feedback in connection with the use of the website, including by assisting clients with explanations of how the algorithm generating investment advice was developed or operates but cannot generate, modify or otherwise provide client-specific investment advice through the operational interactive website or otherwise.

- **Elimination of De Minimis Non-Internet Client Exception:** The amendments eliminated the exception that had allowed advisers relying on the rule to advise fewer than 15 clients through means other than an interactive website. As a result, an adviser must provide advice to all of its clients exclusively through an operational website.
- **Form ADV:** Amendments to Form ADV will require an adviser relying on the Internet Adviser Exemption as a basis for registration with the SEC to represent on Schedule D of its Form ADV that, among other things, it has an operational website. Periodically after that, an internet investment adviser will be required to provide additional affirmative representation on its Form ADV to demonstrate its continued eligibility.

The compliance date for the rule and Form ADV amendments is March 31, 2025. An adviser that no longer may rely on the exemption and does not otherwise have a basis for registration (e.g., sufficient assets under management) with the SEC must withdraw its registration with the SEC by June 29, 2025.



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