

**MEMO# 34228**

July 21, 2022

## **SEC Adopts Rules to Modernize Certain Filing Requirements**

[34228]

July 21, 2022

TO: ICI Members

Accounting/Treasurers Committee

Investment Advisers Committee

SEC Rules Committee SUBJECTS: Fund Accounting & Financial Reporting

Investment Advisers

Operations RE: SEC Adopts Rules to Modernize Certain Filing Requirements

Last month, the Securities and Exchange Commission (SEC or "Commission") adopted final rules and form amendments to mandate electronic filing of certain documents that are currently filed in paper format.[\[1\]](#) The final rules, which were adopted substantially as proposed, will require electronic filing through the SEC's EDGAR filing system of a variety of documents that currently are permitted, but not required, to be filed electronically. The final rules also will require certain documents that currently are required to be filed with the SEC in paper format to be filed electronically, including Form ADV-NR filings, which will be required to be filed electronically through the IARD system. In addition, the rules will harmonize the requirements for the submission of applications for orders under the Investment Advisers Act of 1940 ("Advisers Act") and the Investment Company Act of 1940 ("Investment Company Act") and make certain other conforming changes to the SEC's rules. ICI supported the Commission's proposals to modernize filing requirements for funds and investment advisers.[\[2\]](#) The Commission's final rules are summarized below.

### **Advisers Act**

The final rules will:

- amend Regulation S-T and Advisers Act rule 0-4 to require persons applying for an order under the Advisers Act to file applications electronically through EDGAR. The SEC clarified that requests for confidential treatment may continue to be made pursuant to Regulation S-T.
- allow persons applying for orders under both the Advisers Act and the Investment Company Act to file applications jointly in a single submission.
- remove the requirement for applicants seeking orders under the Advisers Act to notarize verifications and statements of fact and to include proposed notices as

exhibits to applications, consistent with amendments the Commission previously made under the Investment Company Act.

- require Form ADV-NR filers to file electronically through IARD, rather than in paper format. Filing Form ADV-NR will continue to be mandatory for non-resident general partners and non-resident managing agents of SEC-registered investment advisers and exempt reporting advisers.
- make temporary hardship exemptions from electronic filing unavailable for orders under the Advisers Act, but continuing hardship exemptions from electronic filing will be available, as is the case for orders under the Investment Company Act.

## **Exchange Act Section 13(f) and Form 13F**

The final rules will:

- amend Form 13F and related rules under the Securities Exchange Act of 1934 ("Exchange Act") and Regulation S-T to require managers to file requests for confidential treatment electronically via EDGAR as a separate, non-public filing. Requests must include a confidential Form 13F report that is limited to the 13(f) securities holdings for which the manager is requesting confidential treatment.
- indicate on the summary page of a Form 13F report whether confidential treatment is being requested for some or all of the manager's holdings for the quarter-end period.
- require Form 13F filers to provide additional identifying information, such as the filer's Central Registration Depository number ("CRD number") and SEC file number, if any.
- amend Form 13F to allow managers to disclose, for each security reported on the form, the security's FIGI in addition to its CUSIP number.
- amend the instructions to Form 13F for 13(f) confidential treatment requests to require managers seeking confidential treatment to demonstrate that the information is customarily and actually kept private by the manager and that failure to grant the request would likely cause harm to the manager.[\[3\]](#)
- simplify the rounding conventions of Form 13F by requiring all dollar values listed be rounded to the nearest dollar, rather than the nearest one thousand dollars.

## **Edgar Filing Requirements**

The Commission adopted amendments that, among other things, mandate the electronic filing of several documents under Regulation S-T, including documents filed pursuant to Section 33 of the Investment Company Act.

## **Effective and Compliance Dates**

For the amendments related to applications under the Advisers Act, Form ADV-NR filings, and the electronic filing requirements of Form 13F requests for confidential treatment, the Commission adopted a six-month transition period following the effective date of these amendments, which is August 29, 2022. For the amendments to Form 13F, the Commission is delaying the effective date until January 3, 2023. For the amendments to the EDGAR filing requirements, the Commission adopted a six-month transition period following the effective date of those amendments, which is July 11, 2022.[\[4\]](#)

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#### endnotes

[1] See Electronic Submission of Applications for Orders Under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, 87 Fed. Reg. 38943 (June 30, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13936.pdf>; Updating EDGAR Filing Requirements and Form 144 Filings, 87 Fed. Reg. 35393 (June 10, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-06-10/pdf/2022-12253.pdf>.

[2] See Letter to Ms. Vanessa A. Countryman, Secretary, Securities and Exchange Commission, from Dorothy Donohue, Deputy General Counsel - Securities Regulation, Investment Company Institute, dated Dec. 17, 2021, available at <https://www.sec.gov/comments/s7-15-21/s71521-20109980-264309.pdf>. In our letter, ICI also made several recommendations intended to further modernize and facilitate how certain information is submitted to the SEC and how it is disclosed to the public or delivered to investors. The SEC declined to adopt these additional recommendations.

[3] This amendment, which was adopted as proposed, will conform the instructions on Form 13F to a recent US Supreme Court decision that overturned the standard for determining whether information is "confidential" for purposes of the Freedom of Information Act. See *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019) (stating that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4").

[4] The Commission provided for longer transition periods for its amendments requiring filing of Forms 144 on EDGAR as well as those requiring Form 11-K filers to submit the financial statements and accompanying notes to the financial statements in those forms in Inline XBRL format.