

Statement

Statement on Internet Investment Advisers



Chair Gary Gensler

July 26, 2023

Today, the Commission is considering a proposal regarding when investment advisers providing advisory services over the internet can register with the Securities and Exchange Commission. I am pleased to support these amendments because, if adopted, they would modernize a 21-year-old rule to better protect investors in a digital age.

Investment advisers, depending on their size and other characteristics, must register either with the SEC or with state securities regulators. In 1996, Congress divided the responsibility for regulating investment advisers so that larger investment advisers with national presence would be regulated by the SEC while smaller advisers with sufficient local presence would be regulated by the states. We have a good working relationship with these state regulators; the markets benefit from this efficient allocation of resources.

That 1996 law came before the broad adoption of the internet and online finance. In fact, 1996 was the same year that presidential campaigns first had websites.^[1] In subsequent years, some investment advisers that provided substantially all of their advisory services over the internet asked the SEC for an exception allowing them to register with the Commission rather than at the state level.^[2] In 2002, the SEC granted what was intended to be a narrow exception—the Internet Advisers Exemption^[3]—allowing internet-based advisers to register with us instead of with the states.

A lot has changed in the 21 years since, and I believe an exemption written in 2002 allows gaps in 2023. In recent years, staff have observed compliance deficiencies by advisers relying on this exception. In a 2021 risk alert, staff noted that nearly half of the examined advisers that claimed the exception in fact were ineligible.^[4]

Thus, today's proposal would modernize the Internet Advisers Exemption in two ways.

First, the proposal would require advisers seeking to rely on the Internet Advisers Exemption to have at all times an operational, interactive website through which the adviser provides digital investment advisory services on an ongoing basis to more than one client. That means, if the proposal is adopted,

firms that rely on the Internet Advisers Exemption—thus being regulated by the SEC rather than state securities regulators—would actually need to advise clients through the internet, and do so from the moment the firms rely on this exception. The website cannot be used as a prop, akin to how a man behind the curtain used props to pretend to be the Wizard of Oz.

Second, the proposal would require advisers seeking to rely on the Internet Advisers Exemption to provide advice to clients exclusively through this operational, interactive website. Currently, the rule allows advisers to qualify as internet advisers while, for instance, also serving a small number of investors in person, over the phone, or by other means.^[5]

These changes would better reflect what it means in 2023 truly to provide an exclusively internet-based service. This would better align registration requirements with modern technology and help the Commission in the efficient and effective oversight of registered investment advisers.

I'd like to thank the members of the SEC staff who worked on this proposal, including:

- William Birdthistle, Sarah ten Siethoff, Melissa Rovers Harke, Sirimal R. Mukerjee, Blair B. Burnett, Michael Schrader, and Trevor Tatum in the Division of Investment Management;
- Megan Barbero, Meredith Mitchell, Malou Huth, Natalie Shioji, Cathy Ahn, Alice Wang, Dominick Freda, Jeff Berger and David Lisitza in the Office of the General Counsel;
- Jessica Wachter, Charles Woodworth, Rebecca Orban, Alex Schiller, and Nadia Winn in the Division of Economic and Risk Analysis;
- Mathew Meyerhofer and Heather Marlow in the Division of Enforcement; and
- Natasha Greiner, John Polise, Stephanie Bennett, Michael Hershaft, Carolyn O'Brien, Jennifer McCarthy, Elizabeth Blaze, and Keith Kanyan in the Division of Examinations.

[1] See Mike Shields, "An Oral History of The First Presidential Campaign Websites in 1996" (Feb. 18, 2016), *available at* <https://www.wsj.com/articles/an-oral-history-of-the-first-presidential-campaign-websites-in-1996-1455831487>.

[2] As quoted in the proposing release for the 2002 rule: "We recently have been asked, by advisers that provide their services through interactive websites and by their counsel, whether we might use our exemptive authority to permit these advisers to register with us." See Securities and Exchange Commission, "Proposed Rule: Exemption for Certain Investment Advisers Operating Through the Internet" (April 12, 2002), *available at* <https://www.sec.gov/rules/proposed/ia-2028.htm>.

[3] Though referred to in the statement as an exception, the matter technically is an exemption; smaller advisers are prohibited from registering with the Commission unless they qualify for an exemption from that prohibition, such as the Internet Advisers Exemption.

[4] See Securities and Exchange Commission Division of Examinations Staff, "Observations from Examinations of Advisers that Provide Electronic Investment Advice" (Nov. 9, 2021), *available at* <https://www.sec.gov/files/exams-eia-risk-alert.pdf>.

[5] The current rule allows advisers to qualify for the Internet Adviser Exemption even while serving a small number of non-internet clients (fewer than 15) in the previous 12 months.

