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# Are You an ‘Internet Adviser?’ A 10-Year-Old SEC Rule Predated Robo-Advisors



By Chris Stanley General Counsel Loring Ward Holdings Inc. @BeachStreetEsq

The rulemaking phraseology of the SEC can be, at times, somewhat antiquated when it comes to the brave new world of the Internet and technology. To this day, there are references in the Advisers Act and the rules thereunder to, for example, “chat rooms,” “bulletin boards,” and “microfiche.” At the same time, it is unrealistic to expect the SEC to codify every new technological fad; in the race between blistering tech disruption and the sausage factory of government bureaucracy, tech always wins.

That said, the SEC should be given significant credit for paving the regulatory pathway for what it refers to as “Internet Advisers” (read: robo-advisors) over a decade ago. In 2003, the SEC promulgated a new rule under the Advisers Act (203A-2(e)) that was specifically designed to accommodate an adviser that “provides investment advice to all of its clients exclusively through an interactive website.”

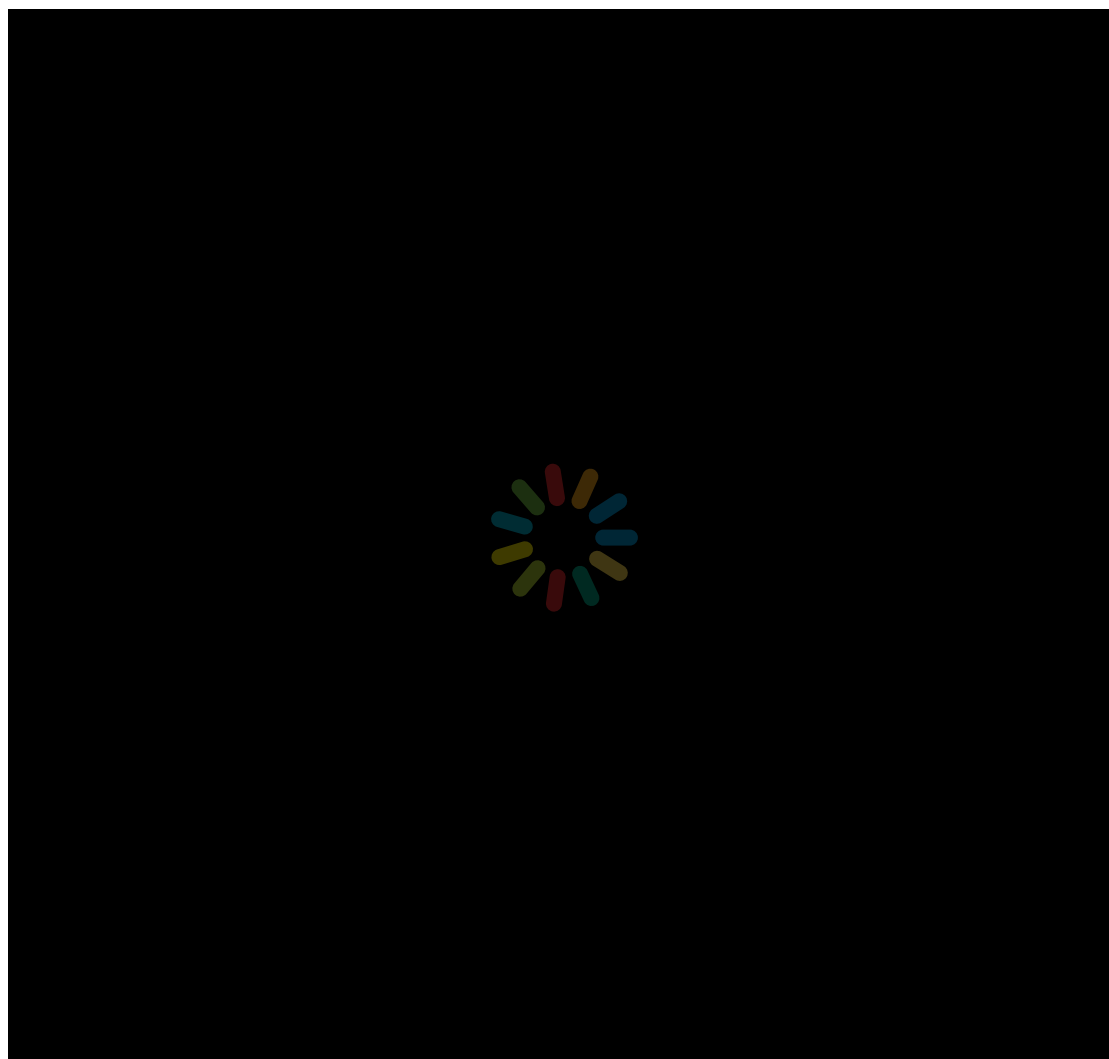
Ordinarily, there are a few criteria that any newly-formed investment adviser must meet in order to immediately qualify for SEC registration (as opposed to registering directly with one or more states). The entire list can be found in Item 2A of the ADV Part 1A, but the most common thresholds are \$100 million in regulatory assets under management or required registration in 15 or more states.

These requirements pose a unique challenge to Internet Advisers, the SEC recognized, because they have “no local presence,” “are not limited to one or a few states,” and serve clients “residing in any state [that] can, upon accessing the interactive website, obtain investment advice at any time.” Internet Advisers thus bore the burden of temporarily registering and de-registering in every state prior to 2003.

Qualifying as a true Internet Adviser for purposes of this exemption requires a careful analysis of Rule 203A-2(e), but an overview of the primary requirements is listed below:

- **Exclusivity:** clients must receive investment advice *exclusively* through an interactive website. An Internet Adviser cannot have personnel “elaborate or expand upon the investment advice provided by its interactive website.”
- **Personalized Advice:** an Internet Adviser cannot simply “aggregate and provide financial information in response to user-provided requests that do not include personal information.” An Internet Adviser’s interactive website must provide advice through computer-based models or applications based on personal information supplied by the client.

- **More than Marketing:** every investment adviser (hopefully) has a website by this point. Merely having a web presence or utilizing e-mail or videoconferencing does not qualify for the exemption.
- **(Almost) All Clients:** an Internet Adviser may provide investment advice outside of its interactive website to fewer than 15 clients during the preceding 12 months.



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