

national investment advisers do not satisfy the assets under management requirement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-16218 Filed 6-19-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-1638/803-108]

Ernst & Young Investment Advisers LLP; Notice of Application

June 16, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: Ernst & Young Investment Advisers LLP ("EYIA").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to continue to be registered with the SEC as an investment adviser.

FILING DATES: The application was filed on February 20, 1997, and amended on June 11, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 787 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Choi, Special Counsel, at 942-0725 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a limited liability partnership formed under Delaware law and owned by Ernst & Young LLP ("Ernst & Young") and Ernst & Young U.S. LLP. Since April 7, 1995, applicant has been registered as an investment adviser with the SEC.

2. Applicant is responsible for the investment advisory services provided by persons in the Personal Financial Counseling practice at Ernst & Young, which is a functional specialty within Ernst & Young's Tax Department.

3. Under applicant's supervision, Ernst & Young provides fee-only personal financial and investment counseling services. Clients of this practice area include (1) large employee groups, (2) affluent individuals, (3) business executives (primarily through company-sponsored programs), (4) closely-held business owners, (5) family offices, (6) private and public foundations, (7) educational and other not-for-profit endowments, (8) corporations, and (9) employer-sponsored welfare and retirement plans. As to certain of these clients, Ernst & Young personnel monitor the activities and performance of other investment advisers selected by the client. Ernst & Young does not have discretionary trading authority for any of its advisory clients.

4. Ernst & Young has 90 offices, which are located in 38 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

5. Applicant has determined that it is required under applicable state laws to register as an investment adviser in 36 states (which include Puerto Rico).

Applicant's Legal Analysis

1. In October 1996, Congress passed the National Securities Markets Improvement Act of 1996 ("1996 Act"). Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), reallocates regulatory responsibilities for investment advisers between the SEC and the regulatory authorities of the several states. The Coordination Act added section 203A to the Advisers Act, which provides that the only advisers that may register with the SEC are those with assets under management of not less than \$25,000,000 or such higher amount as the SEC may, by rule, deem appropriate in accordance with the purposes of the Coordination Act. Section 203A(a)(2) defines "assets under management" as the "securities portfolios with respect to which an

investment adviser provides continuous and regular supervisory or management services." Advisers that do not meet the \$25 million threshold are prohibited from registering with the SEC; those advisers must register with the states in which they do business.

2. Instruction 8(c) to Form ADV-T provides that accounts over which an adviser has discretionary authority and for which it provides ongoing supervisory or management services are considered to be the subject to continuous and regular supervisory or management services within the meaning of section 203A(a)(2). Applicant states that it does not meet this test because Ernst & Young does not have discretionary authority over any of its clients' securities portfolios. Instruction 8(c) also provides that certain non-discretionary advisory arrangements may meet the section 203A(a)(2) test, but only if the adviser has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale. Applicant states that for certain of its clients' portfolios, Ernst & Young does, on a daily basis, reconcile and analyze securities trades made in clients' accounts to ensure that trades are being executed properly. Applicant believes that this is primarily a monitoring function; no investment recommendations are made with respect to the portfolios except on a quarterly or less-frequent basis. Accordingly, applicant concludes that Ernst & Young's services would not satisfy the \$25 million of assets under management test.

3. Section 203A(c) provides that the SEC, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the SEC of any person or class of persons to which the application of subsection (a) would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of section 203A.

4. Applicant states that Congress recognized that the definition of "assets under management" in the Coordination Act requires that there be "continuous and regular supervisory or management services, a standard which may, in some cases, exclude firms with a national or multi-state practice from being able to register with the SEC."¹ Applicant further states that Congress intended the SEC to use its exemptive authority to

¹ S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

permit, where appropriate, the registration of such firms with the SEC.²

5. Applicant notes that the SEC's release adopting the rules implementing the Coordination Act also recognized that "many large advisers operating nationally have been subject to the differing laws of many states" and compliance with these "overlapping, and in some cases, duplicative" sets of laws has "imposed significant regulatory burdens on these large advisers."³ Applicant further notes that the release stated that Congress recognized that some advisers that do not have \$25 million in assets under management may still have national businesses. As a result, the SEC was given the authority to exempt advisers from the prohibition on SEC registration if the application of the prohibition would be unfair, a burden on interstate commerce or otherwise inconsistent with the purposes of Section 203A.

6. Applicant states that Ernst & Young, under its supervision, provides investment advisory services in offices located throughout the United States to several hundred clients.

7. Applicant asserts that the legislation history of the Coordination Act makes clear that it is precisely the type of entity for which national, rather than multi-state, registration is appropriate. Applicant notes that Congress believed that the "states should play an important and logical role in regulating small investment advisers whose activities are likely to be concentrated in their home state," whereas "[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules."⁴ Applicant submits that it does not have a "home state" in which its activities are concentrated; rather, through Ernst & Young personnel, it operates throughout the United States as a national business.

8. Applicant notes that many states have de minimis exceptions from registration requirement, as does section 222(d) of the Advisers Act, which provides a national de minimis standard. Applicant represents that, notwithstanding these exceptions, applicant is currently required by applicant state laws to register as an investment adviser in 36 states. Applicant also submits that Ernst & Young is a national firm, with offices in 38 states and a client base of at least 20,000 clients, which provides the core

for the firm's investment advisory practice.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-16217 Filed 6-19-97; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before July 21, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary Participation Guaranty and Certification Agreement.

Form No: SBA Form 1086.

Frequency: On Occasion.

Description of Respondents: SBA Participating Lenders.

Annual Responses: 12,500.

Annual Burden: 31,125.

Dated: June 13, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97-16136 Filed 6-19-97; 8:45 am]

BILLING CODE 8025-01-M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s): Waiver of Benefit Payment—0960-0533. Form SSA-149 is required to document the fact that benefits due are not being paid, because the beneficiary, (for personal reasons) has requested nonreceipt. Personal reasons can range from religious, patriotic, or political beliefs to situations where continued receipt of payment causes some adverse effect. The respondents are beneficiaries who wish to waive entitlement to benefit payments.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 3.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB: Statement of Self-Employment Income—0960-0046. The information collected on form SSA-766 is needed to determine quarters of coverage for eligibility to Social Security benefits. The information will be used to expedite the payment of benefits to an individual who is self-employed and who is establishing insured status in the current year. The respondents are self-employed applicants for Social Security benefits.

² *Id.*

³ Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 1633 (May 15, 1997, 62 FR 28112 (May 22, 1997)).

⁴ S. Rep. No. 293, 104th Cong. 2d Sess. 4 (1996).