Proskauer

SEC Permits Confidential Treatment Requests for Form ADV Information

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On December 29, 2025, the Securities and Exchange Commission (the "SEC") issued a final rule delegating authority to the Director (the "IM Director") of the Division of Investment Management ("IM") to grant, deny, and revoke requests for confidential treatment under Section 210(a) of the Investment Advisers Act of 1940 (the "Advisers Act"), including requests to keep confidential information filed on Form ADV. While the substantive standard for obtaining confidential treatment remains unchanged, this formalizes a process that previously had been unclear and, as a result, may increase advisers' ability to keep information on Form ADV confidential.

Background

Section 210(a) of the Advisers Act generally requires that information contained in registration applications, reports, or amendments filed pursuant to the Advisers Act be made publicly available, unless the SEC determines that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Advisers are permitted to seek confidential treatment of certain information (including information included in Form ADV), but authority to grant or deny such requests rested solely with the SEC itself, which previously had been of the view that public disclosure of all information required to be disclosed on Form ADV served important investor protection purposes. As a result, though certain advisers had sought confidential treatment of information on Form ADV over the years, the SEC had never taken action on such an application.

Delegation to the IM Director

The final rule amends the SEC's internal operating procedures[1] to authorize the IM Director to issue orders granting, denying, or revoking confidential treatment requests relating to Form ADV and other information filed pursuant to the Advisers Act. Importantly, the rule does not alter the substantive legal standard that must be satisfied before granting a request for confidential treatment. Accordingly, to grant a request, the IM Director will need to find that public disclosure of the information "is neither necessary nor appropriate in the public interest or for the protection of investors."

Advisers seeking confidential treatment of Form ADV information should be prepared to address why public disclosure of the information that they seek to keep confidential is not necessary for the protection of investors. For example, an adviser seeking confidential treatment of information on Section 7.B.(1) of Schedule D (relating to private funds) may note that the relevant information is disclosed to investors in such private fund via its offering documents or data site, making public disclosure of information duplicative and therefore unnecessary.

Procedural Requirements

Advisers should submit applications in accordance with the requirements of Rule 190 of the SEC's Rules of Practice. In general, this rule requires that the adviser submit materials and supporting justification to the IM staff. When the IM staff comes to a decision, they will issue an order, which will be made public. The materials submitted by an adviser in support of its request remain confidential unless otherwise ordered (for example, in connection with the order granting confidential treatment of the underlying information).

Given the short time since the order was published, it is not yet known how long the IM staff will take to make a determination on a request for confidential treatment.[2] As such, and in light of the upcoming deadline to file annual amendments to Form ADV, advisers who intend to seek confidential treatment of information on their Form ADV may wish to plan ahead and allow sufficient time for the IM staff to review and take action on their application. As with other delegations of authority, the SEC retains the right to review any action taken by the IM Director on its own initiative or upon petition by an affected party.[3]

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[1] Specifically, it amends Rule 30-5 of its Rules of Organization and Program Management to add new paragraph (g)(8).

[2] Initial conversations between Proskauer lawyers and representatives of the IM Director's office indicate that applications will be handled by the IM Chief Counsel's Office, which is substantially below its historical size due to the various actions over the past year designed to reduce the size of the Federal workforce.

[3] Except for purely ministerial actions, staff of the relevant division generally provide a member of the Chairman's staff with advance notice of most actions they intend to take under delegated authority. If the action could be controversial, it may be previewed with other Commissioners as well. As a result, it is rare for an order issued under delegated authority to be "pulled up to the tenth floor" and reviewed by the entire SEC, but it happens on occasion. Actions that are reviewed by the Commission are automatically stayed during the pendency of such review.

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