

Reg. of Investment Advisers § 1:7

Regulation of Investment Advisers
Database updated February 2015
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Chapter I. Registration of Investment Advisers

§ 1:7. Who must register?—The investment adviser definition: Section 202(a)(11)—Advice, analyses, or reports about securities—Definition of a “security”

The Advisers Act broadly defines a “security” to include, among other things, any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or put, call, straddle, option, or privilege on any security or group or index of securities.¹ Instruments falling within this definition include the following:

- equity and debt securities
- mutual fund shares
- limited partnership interests
- investment-oriented insurance products, such as variable annuity contracts and variable life insurance policies
- syndicated investments in, for example, motion pictures, cattle, and racehorses.

Advice about types of assets that are not securities, such as real estate, commodities, diamonds, precious metals, coins, and stamps, would not bring a person within the Advisers Act.² In such cases, the SEC staff generally believes such persons or entities should *not* be registered under the Advisers Act.³ However, if a person’s advice also extends to securities, even if only to a limited extent, the person may be deemed to be giving advice about securities under the Advisers Act. Moreover, advice about *interests in* entities that own or hold non-securities, such as oil and gas limited partnerships, would generally be considered giving advice about securities to the extent that these interests are themselves securities.

Although certain foreign currency options traded on a national securities exchange are defined as “securities,” the SEC staff does not require that commodity trading advisors registered with the Commodity Futures Trading Commission (CFTC) also register under the Advisers Act solely because they provide advice or exercise trading discretion with respect to these instruments.⁴

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Footnotes

- ¹ Advisers Act § 202(a)(18).
- ² See, e.g., [Robert R. Champion, SEC No-Action Letter, 1986 WL 68317 \(Sept. 22, 1986\)](#); Thomas Beard, SEC No-Action Letter (pub. avail. May 8, 1973); Memorandum to Chairman Levitt from SEC Division of Investment Mgmt. (Dec. 9, 1994).
- ³ See Memorandum to Chairman Levitt from SEC Division of Investment Mgmt. (Dec. 9, 1994).
- ⁴ See [Philadelphia Stock Exchange, Inc., SEC No-Action Letter, 1994 WL 731399 \(Oct. 18, 1994\)](#).