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May 16, 2008

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-1090

**Re: Proposed Amendments to Part 2 of Form ADV**

Dear Ms. Morris:

Janus Capital Management LLC (“Janus”)<sup>1</sup> appreciates the opportunity to express its views on the Securities and Exchange Commission’s (the “Commission”) proposed rule relating to amendments to Form ADV (the “Proposed Amendments”), as set forth in Release No. IA-2711; 34-57419; File No. S7-10-00 (the “Proposing Release”). The Commission has proposed for public comment amendments to Part 2 of Form ADV (“Part 2”) to require registered investment advisers to deliver brochures written in plain English to clients and prospective clients.<sup>2</sup> The Proposed Amendments are designed to “provide clients and prospective clients with clear, current and more meaningful disclosure of the business practices, conflicts of interest . . . and background of investment advisers and their advisory personnel.”<sup>3</sup> Part 2 would also be publicly available on the Investment Adviser Registration Depository (the “IARD”).

Janus applauds the Commission’s continued focus on providing clients and prospective clients with clear, current and meaningful disclosure by eliminating the current check-the-box format. We agree that the new form of brochure will “greatly improve the ability of clients and prospective clients to evaluate firms offering advisory services and the firms’ personnel, and to understand relevant conflicts of interest that the firms and their personnel face and their potential effect on the firms’ services.”<sup>4</sup> Janus participated in and supports the Investment Company Institute’s (“ICI”) comment letter. We are writing separately, however, to reinforce our views on several issues raised in the ICI letter and to comment on additional points that are of particular importance to us. Our specific comments on the Proposed Amendments are set forth below.

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<sup>1</sup> Janus currently serves as investment adviser or sub-adviser to various proprietary and non-proprietary investment companies, separately managed accounts, commingled pools and wrap accounts. As of March 31, 2008, Janus Capital Group Inc., Janus’ parent company, had \$187.6 billion in assets under management.

<sup>2</sup> *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, SEC Release No. IA-1862 (April 5, 2000), 65 FR 20524 (April 17, 2000) (the “2000 Release”).

<sup>3</sup> *Amendments to Form ADV*, SEC Release No. IA-2711 (March 3, 2008), 73 Fed. Reg. 13958 (March 14, 2008) at 1.

<sup>4</sup> *Proposing Release* at 7.



### ***Required AUM Updates***

Proposed Instruction 4 to Part 2A would require advisers to update changes in assets under management (“AUM”), if the AUM is materially inaccurate, if the adviser is otherwise updating its brochure. Under the current rules, advisers do not have to update their ADV if their AUM has become inaccurate. The Commission’s proposal is extremely problematic for Janus as currently drafted. Janus is a subsidiary of Janus Capital Group Inc. (“Janus Capital”), a publicly traded company, and Janus’ assets are a significant percentage of Janus Capital’s asset base. Janus Capital discloses its AUM on a quarterly basis as part of its quarterly earnings call. Janus Capital does not provide forward-looking guidance between earnings announcements. In complying with the Commission’s proposal as drafted, however, Janus Capital would be required to file a Form 8-K to satisfy its obligations under Regulation Fair Disclosure if Janus were to provide updated AUM with brochure updates. Thus, the proposed change would potentially force Janus Capital to change its approach on guidance which could result in unnecessary disruption and distraction to our investors, the “Street” and our employees. Janus requests that the Commission revise its proposal to allow advisers to update their AUM, if materially inaccurate, as of the most recent public disclosure or to otherwise permit certain exceptions for publicly traded companies or public company affiliates.

### ***Delivery***

Janus supports the Commission’s desire to ensure that clients are informed of material developments regarding their advisers. There are several proposals and amendments that impact the delivery of information to clients. The Investment Advisers Act of 1940, as amended (the “Adviser’s Act”) currently requires registered investment advisers to annually provide or make a written offer to clients to deliver a current copy of its Part 2 (or its brochure). Proposed changes to the current rules include:

- (i) The proposed amendments to Rule 204(3) under the Advisers Act require an adviser to deliver its current brochure to existing clients at least once a year and no later than 120 days after the adviser’s fiscal year end;
- (ii) Item 2 of the Proposed Amendments requires advisers to provide clients with a summary of material changes since the last annual update; and
- (iii) The Proposed Amendments require advisers to provide interim delivery of its brochure when the adviser amends the document to (1) add a disciplinary event or (2) materially change information about a disciplinary event already disclosed.

We support the Commission’s approach that would require advisers to deliver brochures annually to existing clients, with a summary of material changes attached. However, we believe that when an adviser amends its brochure to either add a disciplinary event or materially change information about a previously disclosed disciplinary event, the adviser should have the option to deliver a summary document describing the changes on an interim basis, rather than delivering the entire brochure. The interim summary document could include information reminding clients how to obtain a complete copy of the brochure, should they so desire. In addition, we support the ICI’s recommendation that the Commission permit an adviser to satisfy both its annual and interim delivery requirements by posting its updated brochure on a publicly accessible Internet website. We believe utilizing a summary document along with posting the interim brochure on the Internet will provide clients clarity regarding significant changes without sending duplicative or redundant documents during the year.

### ***Public Access***

The Proposed Amendments include a requirement that advisers file new brochures electronically through the IARD system and make their brochures publicly available. While Janus supports the proposal to have Part 2 available on IARD, we believe that historical brochures should not be maintained on the IARD for



public access. Because the brochure is a guide to an adviser's current business there is no apparent benefit to maintaining historical filings on the public portion of this website. Maintaining historical filings may result in confusion by clients or prospective clients or inadvertent reliance on an out-of-date document. The Commission has taken a similar approach in other contexts such as mutual fund prospectuses and statements of additional information.

Availability of Part 2 on the IARD is certainly a benefit to clients and prospective clients, but Janus is concerned that posting the brochure on IARD could be considered a general solicitation. Janus manages money for products that are offered and sold under the private placement exemption from registration of securities under the Securities Act of 1933, as amended (the "Securities Act") and the Investment Company Act of 1940, as amended (the "1940 Act"). As you are aware, a condition of relying on the exemption is that there is no general solicitation or advertising of the offering by the issuer. Therefore, Janus requests that the Commission provide clarification in the final rule that posting the brochure on IARD is not considered a general solicitation or advertising under the Securities Act or the 1940 Act.

### ***Part 2A – The Firm Brochure***

Janus supports the Commission's proposal to require advisers to provide clients and prospective clients with a narrative brochure. We are specifically in favor of the narrative format which allows advisers flexibility to tailor the disclosure included in the brochure in a manner that makes sense for each adviser. The new instruction that clarifies that an adviser does not need to repeat information in the brochure if that information is responsive to more than one item is especially helpful in streamlining Part 2A and will make the document more client friendly and understandable. We believe the proposed format will result in clear and meaningful disclosure for clients and we agree that this format will "promote more effective client communication."<sup>5</sup>

The Commission requested comment on the usefulness of a uniform brochure format. Janus believes that standardizing the brochure format would undermine the very objective the Commission is seeking to achieve in proposing the new brochure format. Advisers should have the flexibility to describe their business in a customized way because each adviser's business varies. Allowing customization helps to minimize shareholder confusion about what the adviser does and allows room for expanding on areas of the adviser's business that it believes should be highlighted for its clients.

Janus' recommendations to specific items in the Proposed Amendments are set forth below in the order in which these items appear in the brochure.

**a. *Item 4 – Advisory Business.*** Proposed Item 4 of the Proposed Amendments would allow advisers to use a different methodology in calculating AUM in Part 2 than the methodology used in Part 1 of ADV. Janus opposes this proposal. In Part 1, advisers must disclose AUM using a methodology that is specifically outlined in Item 5 of the ADV Instructions. That same methodology should be used for client asset calculations in Part 2. Allowing advisers to use more than one methodology to calculate assets will likely lead to confusion for clients and prospective clients. In order to further the Commission's goal of improving the ability of clients and prospective clients to evaluate advisory firms, advisers should all be using a consistent method for calculating AUM.

**b. *Item 9 – Disciplinary Information.*** Proposed Item 9 seeks to incorporate into the brochure the disciplinary disclosure currently required by Rule 206(4)-4. We support the Commission's proposal subject to some additional modifications. Specifically, we support the modification in the April 2000 proposal that eliminated the requirement for an adviser subject to a Commission administrative

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<sup>5</sup> Proposing Release at 7.



order to provide clients with a copy of that order. Similarly, we urge the Commission not to adopt any arbitration disclosure requirement. Claims are easily asserted and arbitration awards and settlements are often subject to confidentiality clauses. Arbitration settlements are not a finding of guilt and thus should not be included as reportable disciplinary matters. Janus also believes that claims should not be part of an adviser's registration history while pending a final resolution. This is particularly the case since these matters could relate to "normal course" business issues (e.g. employment matters or breach of contract with a vendor) which do not necessarily reflect on the adviser's ability or integrity, or the ability of the adviser to meet contractual commitments to clients as contemplated by Rule 206(4)-4.

We agree disciplinary information regarding an adviser and its related persons is important information for clients to consider when selecting an investment adviser. However, we ask the Commission to reconsider requiring substantially the same information in three locations. Specifically, the information contained in Part 1A, Item 11, proposed Part 2A, Item 9, and Part 2B, Item 3 are substantially similar, but not identical. We believe this lack of uniformity unnecessarily complicates compliance with the disclosure requirements. We encourage the Commission to select one location for advisers to report their disciplinary information. Alternatively, we urge the Commission to reconcile the various sections by adopting consistent instructions, definitions, and requirements.

*c. Item 17 – Voting Client Securities.* Proposed Item 17 would require advisers to disclose certain information regarding their proxy voting procedures. Janus agrees with the comments made by the ICI regarding the proposed proxy voting disclosure requirements. In particular, we agree that an adviser's selection of third-party proxy voting services is not relevant for most clients. The disclosure requirements set forth in Rule 206(4)-6 of the Advisers Act provide clients and/or prospective clients with adequate information regarding an adviser's proxy voting practices.

The Commission has requested comment on whether clients would be interested in knowing the amounts that advisers pay third-party proxy voting services. Janus believes that for advisers that pay hard dollars to third-party proxy voting service providers, a requirement to disclose a dollar amount in the ADV would not be meaningful. It is no more significant than what an adviser pays for portfolio accounting, statement production, or other administrative back office services. The amount an adviser pays to a third-party proxy voting service provider may be based on a number of factors including the level of service received, the number of clients, the number of proxies voted, the use of standard guidelines, research necessary for each particular vote, proxy voting administration (receiving and processing ballots), and proxy report statement generation. In light of all of these factors, it is likely that amounts could vary greatly among advisers, even for those with similar AUM amounts and number of accounts or clients. Clients may not be in a position to understand the reasons for the variations in proxy voting costs among advisers. It is our understanding that most advisers do not increase their advisory fee or charge clients an additional fee to vote proxies. It seems inconsistent to require advisers that use a third-party proxy service provider to disclose the amounts paid and not require the same disclosure for advisers that elect to vote proxies in-house.

*d. Item 19 – Index.* Proposed Item 19 would require advisers to include with the filing of their brochure an index of the items required by Part 2A for use by the Commission staff. Janus urges the Commission to eliminate Item 19. We believe that preparing an index would be time-intensive and burdensome without any benefit to clients. In evaluating proposed Item 19, we suggest the Commission consider applying a standard similar to that of other disclosure documents such as Form N-1A which does not require an index. Rather than an index, we believe that a table of contents as required by Item 3 of the Proposed Amendments can provide the Commission with the necessary information for purpose of review by the Commission staff for compliance with the requirements of Part 2A.



*Coordination between Parts 1 and 2*

Many items in the Proposed Amendments appear to be duplicative to items in Part 1. While Parts 1 and 2 serve different regulatory purposes, maintaining the same or highly similar disclosure in two parts of the overall filing seems unnecessary if both Part 1 and Part 2 will be available on the IARD. There are many instances in which the disclosure in Part 1 and Part 2 are substantially similar, but there are slight wording variations which may lead to confusion or immaterially different disclosure. For example,

- (i) Proposed Item 4 for Part 2A requires disclosure of discretionary and non- discretionary AUM in a manner similar to Part 1 Item 5.F;
- (ii) Proposed Item 4 requires disclosure of client type in the same manner as Part 1 Item 5.D;
- (iii) Proposed Item 4 requires disclosure of ownership of more than 25% in the same manner as Schedule A of Part 1; and
- (iv) Proposed Item 10's disclosure regarding financial industry affiliations is also disclosed in Part 1 Item 7.A and 7.B.

Janus urges the Commission to reconcile the disclosures in Part 1 and Part 2 to either eliminate the duplicative sections or standardize disclosure instructions, definitions and requirements for consistency across the two parts of ADV. As mentioned above in our discussion of Item 9, we believe that the lack of uniformity unnecessarily complicates compliance with these disclosure requirements.

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We support the efforts of the Commission to update and modernize Part 2 of Form ADV, including the Commission's continued focus on providing clients and prospective clients with clear, current and meaningful disclosure. We appreciate the opportunity to provide comments for your consideration on certain elements of the Proposed Amendments. If you have any questions regarding our comments or would like any additional information, please contact me at (303) 394-7609.

Sincerely,

Heidi W. Hardin