



May 16, 2008

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

Re: File Number S7-10-00
Amendments to Form ADV

Dear Ms. Morris:

The Alternative Investments Compliance Association¹ (“AICA”) is pleased to submit this letter in response to the solicitation by the Securities and Exchange Commission (the “Commission”) of comments on the proposed amendments to Part 2 of Form ADV. The proposed amendments, contained in Release No. IA-2711; 34-57419 (the “Proposing Release”), would require investment advisers registered with the Commission to deliver to clients and prospective clients a brochure written in plain English.

While we fully support the Commission’s goal to provide clear, current and more meaningful disclosure to advisory clients and prospective clients of registered investment advisers, and we agree that the proposed narrative format will provide for more effective client communications, for the reasons discussed below, we respectfully request that the Commission consider the following changes be made to the Proposing Release in an effort to achieve a balance between: (i) the client’s need to receive complete and meaningful disclosure; and (ii) the adviser’s need to focus limited resources on its primary responsibility related to providing investment management services. In addition, we believe that adopting the following modifications to the Proposed Rule will allow registered investment advisers to operate with some degree of certainty as it relates to some of their obligations with respect to the Form ADV.

¹ AICA is an association of compliance professionals focused on addressing legislative, compliance and regulatory developments and is dedicated to open communication among industry participants, as well as fostering the development and sharing of compliance best practices. AICA currently has 38 registered members and consists of chief compliance officers, mid-level compliance professionals, general counsels, hedge fund and fund of hedge fund managers, private equity firm managers, industry service providers and other senior executives within the alternative investments industries.

In brief, we propose that the Commission consider modifying the proposed Rule in the following areas:

(1) **Requirement to Summarize “Material” Changes** – We propose that the Commission eliminate the absolute requirement that advisers provide clients with a summary of any material changes to their brochures since the last annual update and provide them with an alternative option. We would suggest that the Commission make the summary an optional approach and permit advisers to provide clients (in lieu of a summary) with a “blacklined” version (sometimes referred to as a “redline” or as a “tracked changes” version) of the amended brochure, which would identify all changes made to the brochure since the last annual update.² This approach would ensure that clients are made aware of *all* changes in the brochure from one year to the next. In our experience, reasonable minds will always disagree as to what constitutes a “material” change, and we believe that removing the element of subjectivity from the updating requirement will provide advisers with a greater degree of certainty in updating the ADV and will make the entire process more cost efficient for such advisers (which is especially important to registered investment advisers with limited resources).

Before we move on to the next area, we would like to emphasize that our suggestion is in no way intended to limit or alter the affirmative fiduciary obligation of the adviser to provide its clients with full and fair disclosure of all material facts. Our comment is limited to the required summary, whose purpose, as the Commission noted in the Proposing Release is, “to provide existing clients with means to easily identify changes from one annual brochure update to the next.”³ We believe that the approach we are suggesting will be the easiest, quickest, and most cost-effective way to achieve the summary’s stated purpose.

(2) **Disclosure Regarding Fees and Risks Related to Private Investment Funds Which Provide Investors with Disclosure Documents** - We would request that the Commission specifically permit advisers to privately offered pooled investment vehicles to incorporate by reference the risk factors and other information contained in the investor disclosure document(s)⁴ of the fund(s) managed by the adviser in response to certain of the items contained in the brochure, in particular the disclosure regarding fees and compensation (Item 5) and the disclosure regarding methods of analysis, investment strategies and risk of loss (Item 8). In addition, given the Commission’s position that the items in proposed Part 2A will not cover every possible conflict⁵, there is the distinct possibility that cautious single fund and multi-fund managers may decide simply to insert the entire contents of the risk factors and conflicts of interest section of each managed fund’s separate investor disclosure document into the brochure. We believe allowing

² In general, new language is indicated by blue double underline and deleted language is indicated by ~~red strikethrough~~.

³ See Proposing Release, note 29.

⁴ These documents would be in the form of an offering memorandum or other functionally equivalent disclosure document.

⁵ See Proposing Release, note 16.

fund advisers to refer to the investor disclosure document(s) will prevent the brochure from becoming so long and detailed as to be rendered unusable. It would also ensure that such advisers do not need to waste limited resources to provide duplicative disclosure to clients and prospective clients.

We would suggest that this modification be solely available to advisers that actually provide detailed⁶ investor disclosure documents to investors and prospective investors.

(3) **Public Nature of ADV Part 2 Filings and Consequences for Advisers that Operate Private Investment Funds** - Our suggestion contained in point (2) above leads us to our final comment, which has to do with the impact that the proposed amendments will have on registered investment advisers who are also fund managers conducting private offerings pursuant to Regulation D of the Securities Act of 1933, as amended. As the Commission knows, hedge funds typically rely upon the exemptions from registration provided in Section 3 (c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, as amended. One of the conditions to each of these exemptions is that the securities of the exempt fund in question is “not publicly-offered”. It should also be noted that many of these funds operate in a state of “continuous offering”.

As proposed, “advisers would file their brochures electronically through the IARD system and the public would benefit by having access to these brochures through the Commission’s Web site.”⁷ We believe that registered advisers whose clients are private funds will be required to provide very detailed information about such funds to ensure that the purposes of ADV Part 2 are met with respect to the complete and clear disclosure of all material facts. This belief is furthered by the fact that at the present, many registered investment advisers that operate private investment funds provide this level of detailed disclosure in the Schedule F to their ADV Part II (as such advisers proactively take the Plain English approach outlined in the Proposing Release). We are of the view that this information is very detailed and would possibly present compliance issues under Regulation D if such information about such a private investment fund was conveyed in other “public avenues” (such as a form of advertisement). The Commission does not address in the Proposing Release the effect, if any, that the publicly available brochure will have on a private Regulation offering, including the apparent conflict between the disclosure required under the proposed brochure amendments and the disclosure prohibited under Regulation D. For this request, we respectfully request that the Commission consider eliminating the requirement that the ADV Part 2 be made publicly available. We would not advocate that such filings not be required to be made via the IARD system, we would simply request that the such filings be solely for the benefit of the Commission. All clients and prospective clients (that actually need such information) would receive a copy of the adviser’s Form ADV Part 2 and all updates (either in paper format or electronically via email or password-protected website posting) pursuant to the requirements of Rule 204-3 (the “Brochure Rule”) of the Investment Advisers Act of 1940 . It simply would eliminate the requirement that the ADV Part 2

⁶ In this sense detailed disclosure would mean an investor disclosure document that that provides all material disclosures required by Item 5 and Item 8 and other relevant parts of Part 2A

⁷ See Proposing Release, p. 7.

be made publicly available. If the Commission does not agree with AICA on this point, we would request that the Commission provide further guidance on this issue and the consequences to such advisers under Regulation D.

In furtherance of this point (3), we respectfully point out that the information required to be contained in the brochure is likely to be considerably more detailed than the information that would be allowed pursuant to the limited offering privileges contained in the Proposed Rule 507.⁸ As such, we would like to take this opportunity to reiterate our position contained in our letter dated October 8, 2007, where we requested that the Commission extend the application of Proposed Rule 507 to private investment funds, in an effort to bring the rules relating to private investment fund offerings in line with the realities of the modern market practice and facilitate capital formation without comprising investor protection. This is especially true if the Commission does not adopt AICA's suggestion to eliminate the requirement that the ADV Part 2 be made publicly-available. At a minimum, we would respectfully request that a consistent approach is taken on this issue.

We appreciate the opportunity to comment on the Proposing Release and would respectfully urge the Commission to take these comments into account. We would be happy to discuss any questions the Commission or its staff may have with respect to our comments. Any such questions may be directed to William G. Mulligan at (212) 515-2800.

Very truly yours,

AICA



By: William G. Mulligan
Chair and Member of the Board of Managers

⁸ Proposed Rule 507 (File No. S7-18-07) contains a proposed exemption from the registration provisions of Section 5 of the Securities Act for offers and sales of securities to "large accredited investors". Rule 507, as proposed, excludes hedge funds, private equity funds, venture capital funds, other pooled investment funds, and funds of any such funds that rely on the Rule 506 safe harbor as an exemption from registration under Section 4(2) of the Securities Act to benefit from the limited public advertising privileges under Proposed Rule 507.