

CCOutreach Regional Seminars
Summary of Recent SEC Rulemaking Initiatives
by the Division of Investment Management*

April 4, 2008

Proposed Amendments to Part 2 of Form ADV (Release No. IA-2711)

The Commission recently proposed amendments to Part 2 of Form ADV to require investment advisers to deliver to clients and prospective clients a narrative brochure written in plain English. If adopted, advisers would file their brochures with the Commission electronically on IARD. The brochure would address 19 disclosure topics, which would address conflicts of interest between the investment adviser and its clients (e.g., soft dollars and other brokerage practices, and financial service affiliations) and the business practices and background of the investment adviser. The proposal also would require investment advisers to deliver brochure supplements that provide information about certain of their advisory personnel.

The comment period closes on May 16, 2008. The proposing release is available at: www.sec.gov/rules/proposed/2008/ia-2711.pdf

Temporary Rule Regarding Principal Trades with Certain Advisory Clients
(Release No. IA-2653)

On September 19, 2007 the Commission adopted temporary rule 206(3)-3T. The rule provides an alternative method for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of Advisers Act section 206(3) when they act in a principal capacity with respect to transactions with certain of their advisory clients. Specifically the rule permits an adviser, with respect to non-discretionary advisory accounts, to comply with section 206(3) by: (1) making certain written disclosures; (2) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (3) making certain oral or written disclosures and obtaining the client's consent orally or in writing before each principal transaction; (4) sending confirmation statements to the client disclosing specified information; and (5) delivering to the client an annual report itemizing the principal transactions.

The rule became effective on September 30, 2007 and will expire and no longer be effective on December 31, 2009. The adopting release is available at: www.sec.gov/rules/final/2007/ia-2653.pdf

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Proposed Interpretive Rule Under the Advisers Act Affecting Broker-Dealers (Release No. IA-2652)

The Commission published for comment an interpretive rule that would address the application of the Advisers Act to certain activities of broker-dealers. The proposal would reinstate the following interpretive provisions of a rule under the Advisers Act that was vacated by a recent court decision: (1) *separate fee or contract*: when a broker-dealer charges a separate fee for, or separately contracts for, advisory services, its advice would not be considered “solely incidental” to the business of brokerage; (2) *discretionary asset management*: when a broker-dealer provides discretionary investment advice it would not be considered to be providing advice that is “solely incidental” to the business of brokerage; and (3) *discount brokerage*: a broker-dealer would not receive “special compensation” solely because it charges a commission for discount brokerage that is less than it charges for full-service brokerage. Finally, the proposed rule would re-codify an interpretation that dually-registered broker-dealers and investment advisers are considered investment advisers solely with respect to those accounts for which they provide services that subject them to the Advisers Act.

The comment period closed on November 2, 2007. The proposing release is available at: www.sec.gov/rules/proposed/2007/ia-2652.pdf

Proposed Amendments to Regulation S-P (Release No. 34-57427)

The Commission recently proposed amendments to the rules for safeguarding and disposing of personal financial information under Regulation S-P. The proposed amendments would, among other things, (1) set forth more specific requirements to safeguard investors’ information and respond to information security breaches, (2) apply the rules to a broader scope of personal information and to additional persons within the securities industry, and (3) permit a limited transfer of information to a nonaffiliated third party without the required notice and opt out when personnel move from one broker-dealer or registered investment adviser to another.

The comment period closes on May 12, 2008. The proposing release is available at www.sec.gov/rules/proposed/2008/34-57427.pdf

Proposed Mutual Fund Disclosure Reform (Release Nos. 33-8861; IC-28064)

In 2007, the Commission proposed amendments to Form N-1A, the form used by mutual funds to register under the Investment Company Act and to offer securities under the Securities Act in order to enhance the disclosures that are provided to mutual fund investors. The proposed amendments, if adopted, would (1) require key information to appear in plain English in a standardized order at the front of the mutual fund statutory prospectus, (2) permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet

Web site, and (3) require a fund to send the statutory prospectus upon request. The summary prospectus would include key information about the fund, such as investment objectives and strategies, risks, costs, and performance.

The comment period on the proposed rule and form amendments closed on February 28, 2008. The proposing release is available at www.sec.gov/rules/proposed/2007/33-8861.pdf

Proposed Rule Regarding Exchange-Traded Funds (Release Nos. 33-8901; IC-28193)

The Commission recently proposed a new rule under the Investment Company Act of 1940 that would exempt exchange-traded funds (ETFs) from certain provisions of that Act and related rules. The rule would permit certain ETFs to begin operating without the expense and delay of obtaining an exemptive order from the Commission. The Commission also proposed amendments to the disclosure form for open-end investment companies, Form N-1A, to provide more useful information to investors who purchase and sell ETF shares on national securities exchanges. In addition, the Commission proposed a new rule to allow mutual funds (and other types of investment companies) to invest in ETFs to a greater extent than currently permitted under the Investment Company Act.

The comment period closes on May 19, 2008. The proposing release is available at www.sec.gov/rules/proposed/2008/33-8901.pdf

Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles (Release No. IA-2628)

In 2007, the Commission adopted rule 206(4)-8, which prohibits advisers to pooled investment vehicles from defrauding investors or prospective investors in those pooled vehicles. The rule makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser to a pooled investment vehicle to make false or misleading statements to, or otherwise to defraud, investors or prospective investors in that pool. The rule applies to all investment advisers to “pooled investment vehicles.”

Rule 206(4)-8 became effective on September 10, 2007. The adopting release is available at www.sec.gov/rules/final/2007/ia-2628.pdf

Other Regulatory Initiatives

This is a link to a recent speech by the Director of the Division of Investment Management, describing these and other regulatory initiatives:

www.sec.gov/news/speech/2008/spch032108ajd.htm