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May 16, 2008

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Number S7-10-00
Amendments to Form ADV Part 2 and Related Rules

Dear Ms. Morris:

Ascendant Compliance Management, Inc. welcomes the opportunity to comment on the SEC's proposed amendments to Form ADV, Part 2 and related rules under the Investment Advisers Act. Herein we comment on a number of specific items based on our experience drafting and reviewing many hundreds of ADVs for investment advisers of all types. Our comments typically concern areas of content that have often caused some confusion among investment advisers and that should be reviewed at this critical juncture.

Proposed Format

The SEC has specifically requested comment on the proposed narrative format of Form ADV Part 2. We understand that there has been some industry expression that non-uniform documents will not enhance clients' comparisons of investment advisers. We believe this concern is significantly outweighed by the concept of creating readable user-friendly brochures for the public. While potential clients may occasionally place brochures side-by-side for comparative purposes, we conclude that the content rather than the structure is of utmost importance.

Item 2. Material Changes

We agree with the rule proposal's promotion of the need for advisers to explain material brochure changes. Such an approach is consistent with SEC disciplinary actions against advisers for failing to disclose new conflicts. The SEC requested comment on suggested approaches for advisers to achieve the dissemination of material changes. We believe that there is no need to require that changes be described in the brochure itself, and that no benefit would be achieved by mandating a specific approach. In fact, requiring that changes be included in a brochure may cause confusion to new clients who had not received a previous version of an adviser's brochure. Advisers should be able to employ a flexible approach to this requirement, and would likely employ separate summary descriptions.

Item 4. Advisory Business.

This item would require the disclosure of an adviser's "assets under management", yet allow advisers to calculate this figure differently than in Form ADV, Part 1A, Item 5F. Our experience with advisers is that the industry has some difficulty applying the calculation methodologies of Part 1A, Item 5F, which is based on bright-line categories for determining eligibility for SEC registration. We suggest that the SEC should take note of the significant ambiguities in the application of Part 1A Item 5F. In particular, consultants to pension plans may report $0 in this item yet have significant potential impact on the national economy. Public viewing of this item does not adequately portray such firms' role in the economy. Similarly, certain other advisers who recommend money managers (without the discretion to hire and fire such money managers) are also not permitted to report advised assets within Part 1A, Item 5F.

The benefits of a narrative Form ADV Part 2 is to provide advisers the ability to accurately and adequately describe their advisory businesses. An adviser's service description and indication of assets under management (or advisement) should together allow an adviser to portray the nature and size of the adviser's business.

In fn. 34, the SEC makes it clear that asset under management figures are mandated in Part 1 only for purposes of verifying registration. With this purpose suggested and no other purpose apparent, we question why Part 2 would mandate that only advisers who "manage" assets, as defined for Part 1.A., Item 5.F., must disclose those assets. This distinction does not seem pertinent and again raises the question of the ambiguity of Part 1, the term "manage," and the public's ability to meaningfully compare statistical data.

Item 5. Fees and Compensation

We agree with the SEC's conclusion that it is sufficient to disclose generally to clients information about mutual fund or other third party fees to the extent such fees do not cause a conflict of interest. Providing specific disclosure about the fees charged by third parties would be unduly burdensome.

Item 6. Performance Fees and Side-by-Side Management

The SEC explains in this item that advisers who charge performance fees to some clients but not to others have an incentive to favor the performance fee accounts. Such advisers would be required to disclose here "the conflicts that arise from its simultaneous management of these accounts, and to describe generally how the adviser addresses those conflicts." In its discussion of this Item 6, the SEC further indicates that an adviser with such fee arrangements "may have an incentive to direct the best ideas to, or to allocate or sequence trades in favor of, the accounts that pay a performance fee."

While we recognize the potential ramifications of side-by-side management, we question whether an adviser should be required to disclose this particular incentive to favor certain accounts even if the adviser monitors internally such conflicts and implements procedures designed to ensure fair and equitable treatment among clients. It would seem more appropriate to require disclosure only if an adviser engages in practices that may actually advantage certain clients by, for example, allocating IPOs only to certain accounts.

Our concern is that the SEC's proposed Item 6 instruction focuses on a factual situation rather than on situations in which the conflict of interest affects an adviser's behavior. General disclosure of this "incentive" to treat clients unfairly casts an unnecessary, negative implication on many investment advisers acting as fiduciaries to their clients and treating each client fairly and equitably.

Item 8. Methods of Analysis, Investment Strategies and Risks of Loss

The SEC has requested comments regarding whether Item 8 should require particular disclosures. While we have commented that inherent flexibility in the proposed revisions to Part 2 will allow for enhanced disclosure, this premise may be limited in this particular context. Descriptions of risk, and unguided determinations of degrees of risk, may surely result in great disparities in disclosures by investment advisers.

A sample mutual fund performance advertisement, which covers numerous funds and investment strategies, today reads:

> The Funds may invest in mid-size and small companies which present greater risk and higher volatility than investment in larger, more established companies. The Funds may invest in foreign issuers; there can be special risks associated with investing in foreign securities. [A Fund] may invest in lower-rated securities, which present greater risks than investments in higher-rated securities

Is this type of disclosure necessary in a fiduciary relationship? Heading into 2007, auction-rate securities were utilized as liquid investments with little or no risk of a failed auction and liquidity issues. To what standard will an adviser be held in attempting to make such disclosures?

Item 11. Other Financial Industry Activities and Affiliations

We have two comments related to this section. First, proposed Item 11C includes a list of types of companies that has not changed materially from the current ADV Part II, Item 8C list of types of companies. We suggest that the SEC consider why pension consultants are listed under a category separately from "investment advisers" and similarly why financial planners are identified separately from investment advisers. Each of these types of companies is an "investment adviser." (See the discussions of pension consultants and financial planners in various parts of the rule proposal.) Likewise, the instructions should define "sponsor or syndicator of private partnerships" before continuing to use such term as that term has not been otherwise defined and is not commonly used in the industry.

Second, we suggest that the instructions of Item 11D do not concern the same issues addressed by related businesses and financial institutions otherwise addressed in Item 11A-C. In fact, Item 11D addresses service relationships and conflicts of interests involving unaffiliated money managers, which we believe would be better addressed in relation to an adviser's services description. The evaluation and recommendation of third-party money managers has developed as a substantial practice by advisers and should be addressed accordingly in service descriptions.

Item 12. Brokerage Practices

The proposed Item 12 instructions improve the guidance that has been provided for drafting brokerage practice disclosure. The new instructions address many of the best practice disclosure that compliance consultants have been assisting investment advisers with for a number of years. For the first time, the SEC is officially recognizing that advisers and their clients can mutually agree that all of a client's transactions will be directed to a particular broker. Smaller advisers in this context rely on custodial brokers with platforms designed for registered advisers that do not otherwise have their operations facilities. The SEC's clarification should ameliorate best execution concerns advisers may have otherwise had when agreeing with clients that all client transactions will be executed at a single broker which custodies the client assets.

Item 19. Index

Item 19 would require an index including reference to each item identified in the Part 2A instructions. To this point, the SEC's open narrative approach allows advisers to craft meaningful brochures without unnecessary reference to regulatory legalese. However, the index requirement seems to back-track. We believe an index referencing items referred to in the instructions will not help the public when reviewing the form, and will create additional costly burdens in crafting the documents.

Wrap Fee Brochures

After reviewing the revised instructions for Part 2A, Appendix 1, we do not believe that a separate document should continue to be mandated for a wrap fee program. After numerous years of development, wrap fee programs have demonstrated their integration into the financial industry in such a way that they no longer need to be treated as requiring a separate brochure. The unique disclosures for wrap fee programs could be handled as an item in the Part 2A instructions requiring a response only as applicable. A number of other items are already handled in this manner. See fn. 19 of Rule Proposal for a list of items that may not apply to various investment advisers.

Conclusion

In conclusion, we believe that the nuances Ascendant Compliance Management has described reflect some of the reasons why drafting new disclosure brochures will remain a difficult task for investment adviser industry participants. Crafting meaningful disclosure, despite a Plain English approach, requires (1) an understanding of a particular advisory business, (2) an understanding of the financial services industry generally, and (3) the application of (1) and (2) to regulatory interpretations of the concepts covered in the brochure by SEC staff through interpretations and during examinations. Nevertheless, adoption of the new Part 2 will be an important step forward for the industry and the revised instructions provide more clarity than the prior Form ADV, Part II.

Ascendant Compliance Management appreciates the opportunity to offer these comments to the SEC's proposal. If you have any question concerning them, please contact the undersigned at (860) 435-2255.

Very truly yours,

Ascendant Compliance Management, Inc.
Keith Marks, General Counsel

cc: Jonathan Higgins, CEO