

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

Re: Commission File No. S7-10-00; Amendments to Form ADV
Dear Ms. Morris:

Shawbrook, is a registered investment advisory firm in Alexandria, VA, that since 2001 has helped investors who do not have the time, interest or knowledge to manage their retirement accounts and other investments. Although Shawbrook is a state-registered advisor, it and its clients have a legitimate interest in this rulemaking as state securities commissions may well adopt the SEC's revised ADV in its entirety in the interest of "regulatory uniformity."¹

The comments that follow reflect Shawbrook's role as both a provider and as a user of ADV's. Some of the comments may also express views that Shawbrook feels are in the interest of its clients. As a general statement Shawbrook supports full disclosure by advisors, including full disclosure of disciplinary history, conflicts of interest, and fees [just so there is no confusion later on the Commission should make clear that the fees to be disclosed include 12b-1 fees].

What follows are brief comments on a number of items in the proposed rulemaking, beginning with a slightly longer comment on Item 8.

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

From the point of view of the investor Item 8 is one the most important sections of the brochure. All the more reason that the commission's singling out of "frequent trading" for special disclosure is especially disturbing. I think I speak for many investment advisors when I say that we expect the SEC to be investment strategy-neutral when it comes to securities regulation. That is, the commission should not, as a matter of principle, disparage or promote one type of investing versus another.

¹ Shawbrook wonders whether investors and the investment profession would be better served if state and federal regulators worked together to elicit comments simultaneously on a proposed rulemaking such as this.

Public policy may sometimes require the commission to discourage certain activities that happen to abuse trading. For instance, both brokers who churn accounts and mutual funds that place trades through an affiliated brokerage might raise public policy questions and the Commission has determined that a public policy issue was involved when certain hedge funds were market timing open-end mutual funds, a strategy that involved active trading.

What makes the above examples worthy of attention had nothing to do with the number or frequency of trades, but rather with the intent of the broker or advisor.

Public policy issues could just as easily be raised in a strategy with little trading, such as “buy and hold.” Such a strategy could be the result of an advisor’s genuine belief that he or she can predict the outcome of markets over an extended period of time. However the strategy could also be nothing more than a smoke screen for an advisor who is too busy accumulating new assets and doesn’t care to carry out his fiduciary duty to guide existing clients through a changing investment landscape. Yet would it be fair to single out “infrequent trading” by requiring a special disclosure?

Why has the commission sought to highlight so-called “frequent trading”? Although the proposed rulemaking does not reveal its specific concerns, the commission was a little more specific in footnote 144 of the 2000 proposal: “Advisers whose primary strategy involves frequent trading would have to explain how the strategy may affect performance, *due to higher transaction costs and taxes.*” [emphasis added]

As for transaction costs Shawbrook notes that they are already disclosed in item 5, where the commission has asked advisors “to describe the types of other costs, such as brokerage, custody fees, and fund expenses, that clients may pay in connection with the advisory services provided to them by the adviser.”

And as for taxes they, like brokerage costs, are more of a factor, suitable for Item 5, than a “risk.” Shawbrook would also note that an advisor might very well fall into the category as a “frequent trader” while in the process, not of raising the investor’s tax burden, but instead of minimizing taxes by making trades to realize losses. Furthermore most advisors probably use “frequent trading” strategies in tax-deferred accounts, not taxable accounts. A warning about having a strategy inappropriate to a particular account could also be applied to many investments, including TIP’s and

municipal bonds. But again, strategies being inappropriate for an account has little or nothing to do with the risk created by an investment strategy.

Neither transaction costs nor taxes are risks, as that term is commonly used. Therefore, putting them in a section of the brochure designated to disclose “risk of loss” is misleading to the investor and unfair to the active investment manager.

There are a number of major investment-related risks in having one’s assets managed by an advisor, the most important of which is simply that the advisor will be wrong. That is true whether there is only one trade or 10,000 trades. ²

Shawbrook hopes the commission will find there are other sections better designed to handle such factors as brokerage commissions, taxes and fees. Item 8 should be where all advisors properly disclose their strategies and those strategies’ risks. ³

Item 16. Investment Discretion

Footnote 118 in that item says “For example, clients may not understand that they may ask the adviser not to invest in securities of particular issuers.” A client presumably can always try to negotiate their advisory agreement to allow for such veto power, but the language of that sentence may mislead an investor into believing that they have a statutory right, even in a full discretionary account, to dictate specific investment decisions. The wording of that sentence should be changed.

² Since the commission first proposed a special disclosure regarding “frequent trading,” the buy and hold strategy using a Vanguard index fund tracking the S&P 500 [from March 31, 2000 through March 31, 2008] has generated a negative return and an even larger negative real return. Similarly Shawbrook notes that at the present time short-term real interest rates are negative. Anyone investing in short-term treasuries, supposedly the safest of investments, and adopting a buy-and-hold strategy may well end up receiving lackluster investment performance. Thus, the idea that other investment strategies, such as buy-and-hold, don’t have their own special risks is not consistent with investment reality.

³ Many so-called frequent traders are in fact very risk averse. By seeking many small gains, they also seek to reduce the damage caused by any one trade.

Item 19. Index

The commission's decision on whether advisors should be required to provide clients with an index could be tied to the decision on the table of contents and on a uniform format (Item 3). If the commission does propose a standard format, which Shawbrook suggests it does, but still allow advisors to ignore the format, then those advisors choosing to ignore the format could be required to provide a detailed brochure index to all clients. All brochures should have a table of contents.

3. Supplement Items

Item 2. Educational Background and Business Experience. The proposed rulemaking says, "We are not, as originally proposed, including the requirement to describe professional designations or attainments..." Shawbrook agrees with the commission. Requiring the disclosure of such designations would lend them an authoritative status that is neither necessary nor justified.

3a Annual and interim delivery

Footnote 147 in that section says "...the proposed 120-day period is designed to provide sufficient flexibility to allow advisors to include the updated brochure in a routine quarterly mailing to clients. We expect that permitting an adviser to send the brochure together with these routine mailings could substantially reduce delivery costs." The wording suggests that the advisor would not be required to obtain a proof of delivery, which Shawbrook thinks is as it should be. Proof of delivery is something the SEC could require on a second mailing, only after the client complained [to the advisor or the commission] of not having received the first mailing.

Hedge funds.

One commenter has suggested that hedge funds should be excused from the brochure requirements for other advisors. Shawbrook disagrees. Hedge fund investors may be "qualified" because they are sophisticated enough to understand hedge funds but it is hard to understand information if it is absent in the first place. The commenter suggested that a hedge fund's private placement memorandum contains the necessary information_it has been Shawbrook's experience that a client can go for years without being offered an updated private placement memorandum.

Sincerely, Geoffrey F. Foisie
Investments Manager