

# THE FINANCIAL SERVICES ROUNDTABLE

*Impacting Policy. Impacting People.*



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May 16, 2008

**VIA EMAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Ms. Nancy Morris, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090

## **RE: SEC Proposed Rule and Form Amendments: File Number S7-10-00**

Dear Ms. Morris:

The Financial Services Roundtable<sup>1</sup> (“Roundtable”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC”) proposed rule and form amendments to Form ADV and the related rules under the Investment Advisers Act. While the Roundtable believes it is necessary to provide customers with clear and concise disclosures, we are concerned that this proposal actually contradicts other concurrent proposals at the SEC designed to improve communication to customers.

For example, the recent results of the RAND study on investment advisers and broker-dealers illustrated that customers not only fail to read the disclosure documents they already receive but that more detailed disclosure has hampered customers from fully understanding their investments and advisory relationships. Additionally, the SEC’s mutual fund summary-prospectus proposal, the SEC itself acknowledges that consumers of investment products want short, concise disclosure documents.<sup>2</sup>

Therefore, the Roundtable *encourages* the SEC to re-evaluate this proposal in light of these other initiatives and to enhance its goal of providing customers with the necessary information to make sound investment decisions and also provide them with choices about how they would like this information delivered. It appears that the additional disclosure in this proposal could cause more confusion and perhaps even lack of interest by the average retail investor. Should the SEC choose to adopt this proposal in the near future, we have summarized our specific concerns below.

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<sup>1</sup> The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$66.1 trillion in managed assets, \$1.1 trillion in revenue, and 2.5 million jobs.

<sup>2</sup> To view the Roundtable’s comments on this proposal, please visit:

[http://www.fsround.org/policy/regulatory/pdfs/Roundtable\\_mutualfundprospectussummary\\_final.pdf](http://www.fsround.org/policy/regulatory/pdfs/Roundtable_mutualfundprospectussummary_final.pdf).

### Annual Delivery

The proposed delivery requirements - regardless of whether in paper or electronic form - could create the unintended result of client complacency and dissatisfaction. Pursuant to the SEC's current requirement, our members' registered investment advisers offer to delivery their firm brochures annually. For the past several years, the combined response rate of thousands of our members' clients to these offers has been fewer than ten total requests. The Roundtable can interpret this response rate to mean that clients simply are not interested in receiving the brochure. Should firms be required to deliver documents to clients, regardless of whether or not the client chooses to receive such documents, the Roundtable is concerned that clients will stop reading such documents, which would go against the true intent of this proposal. This problem is even more likely to occur in the context of clients owning more than one type of advisory product (*e.g.*, a retail client who has purchased both a financial plan and a wrap product) because such a client would receive twice—or even three times—as much mail as a client who only maintains a financial planning relationship with one advisor.

Therefore, the Roundtable *recommends* several solutions to this problem:

- the SEC should maintain the current annual-offer requirement. That way, firms can still offer their customers the option of receiving such brochures and customers can have the option of whether or not to receive these documents.
- the SEC should require the annual delivery requirement, but permit different types of delivery, such as a posting of the current version of the firm's brochure on a publicly accessible website.
- If a client does not consent to electronic delivery, instead of requiring annual delivery of the complete brochure, the SEC should require only delivery of the summary of changes, along with an offer to deliver the complete brochure. This would be similar to the mutual fund prospectus summary proposal that the SEC recently issued.

Additionally, if the SEC were to move forward with the proposal as written, the Roundtable *recommends* that firms have the option of staggering the information to clients over the course of a year, rather than at the same time of year for all clients. Given that the client receives a brochure at formation of the advisory contract, it would be confusing for the client to receive another brochure soon afterwards, if that happens to be the time that the firm conducts its annual delivery. Therefore, the Roundtable *recommends* that the annual delivery requirement can be accomplished on the customer's anniversary date of the formation of the relationship.

### Time Frame

Given that the registered investment adviser must update Part 1 of Form ADV within 90 days after the end of its fiscal year, the requirement that the registered investment adviser to deliver its brochure within 120 days after the end of its fiscal year (a mere 30 days after it finishes updating Part 1) imposes an unreasonable administrative burden on large retail registered investment advisers. A registered investment adviser cannot begin printing and mailing updated brochures until it completes its annual update of Part 1 of Form ADV. Our members' registered investment advisers tend to use the entire 90-day period following the end of its fiscal year to complete the Part 1 update. Therefore, if the annual delivery requirement were adopted as proposed, registered

investment advisers would have to print and mail hundreds of thousands of firm brochures within 30 days of completing its annual update of Part 1. A month is simply not enough time to complete a printing/mailing job of that size.

Due to this unnecessary cost and burden on our members, the Roundtable *recommends* that the SEC extend the time frame for delivery of the brochures from 150 days to 120 days following the end of its fiscal year.

#### Costs Associated with Delivery

Given the unlikelihood that clients will most likely not read the firm brochures sent to them (as discovered by the recent RAND study), the combined cost of the annual delivery requirement and the interim-update delivery requirement imposes an undue financial burden on our members. In addition the annual delivery requirement, the SEC's proposal would also require the registered investment adviser to promptly deliver notice of any additions to or material changes to legal or disciplinary events regarding the firm or its management. The annual printing and mailing costs of such notices can be upwards of \$2.2 million. Since the costs associated with this proposal continue to outweigh the benefits, the Roundtable *recommends* that the SEC closely examine this issue and provide alternatives to the delivery requirements, as outlined above.

#### **Part 2A (Firm Brochure) Disclosure Requirements**

Within the current proposal, the SEC requires registered investment advisers to disclose material changes. The Roundtable does not believe the registered investment adviser should have to assume responsibility for determining what constitutes a "material" change. Registered investment advisers may have a client base comprising several different types of clients (e.g., hedge fund clients, mutual fund boards of directors, retail wrap-clients), and what constitutes a material change for one type of client may not constitute a material change for another type. Consequently, this proposed requirement may result in perceived inconsistencies and the need to prepare and maintain multiple lists of material changes. Requiring a RIA to determine which changes are material and which are immaterial may also have a chilling effect on disclosure due to increased litigation or enforcement risk.

Additionally, this proposed requirement is inconsistent with requirements existing elsewhere in the industry (e.g., Form BD, Form N-1A).

The Roundtable *recommends* that this requirement be withdrawn from the proposal. Rather, the SEC could require a summary of year-over-year changes without requiring a designation of materiality by the registered investment adviser.

#### **Part 2B (Brochure Supplement) Disclosure Requirements**

The Roundtable believes that the requirement of a brochure supplement is unnecessary and therefore, *recommends* that such a requirement be deleted from the final rule. Creating a brochure supplement creates additional cost and burden to the industry and such costs outweigh the benefit of such a supplement.

In the event that the SEC proceeds with such a requirement, the Roundtable *recommends* that the SEC exempt dual registrants from such a requirement. A large majority of the information required in the supplement is already available to the public and thus, would be duplicative.

Additionally, if the SEC does not eliminate such a requirement, the Roundtable offers the following comments on how such a requirement should be amended.

### Supervised Personnel

The requirement that the registered investment adviser must deliver a brochure supplement with information regarding all “supervised persons who make discretionary investment decision for that client’s assets, even if the supervised person has no direct client contact” should, at a minimum, be revised to match well-understood definition of Portfolio Managers applicable to mutual fund registration statements. If these two standards do not match, shareholders of a mutual fund in strategy A would receive different disclosure regarding investment personnel than a client owning a separate account managed by the same adviser according to strategy A. Additionally, this requirement puts a registered investment adviser that manages funds in the position of having to adhere to inconsistent requirements seeking to accomplish the same objective.

### Name of Supervisor

Under the SEC’s proposal, the registered investment adviser would have to disclose the name of the person responsible for supervising the advisory activities of the supervised person. The Roundtable *recommends* that this requirement be deleted. Rather, providing customers with a customer service call center’s information should be sufficient. Due to the ever-changing work environment (*i.e.*, resignations, promotions), it would be a logistical nightmare for firms to continuously update the brochure supplement with the correct information.

### The term “Brochure Supplement”

Some of the Roundtable’s members found the term “brochure supplement” to be confusing since the SEC has chosen the term “brochure supplement” to refer to Part 2A. Such a term also has a well understood meaning in the industry to refer to updates that occur outside of the annual update process. Therefore, the Roundtable *recommends* that the term be replaced with a more descriptive term that actually speaks to the purpose of the document (*i.e.*, investment adviser representative biography, fact sheet, *etc.*).

### Disclosure of Disciplinary Background

Requiring the registered investment adviser to disclose information about supervised person’s disciplinary background that is already publicly available imposes an undue administrative burden on the RIA. Much of the disciplinary information that the SEC proposes be included in Part 2B is already publicly available. For example all disciplinary background on RIAs is published on FINRA’s website and all information on current employees that are not registered is disclosed in Part 1 of the Form. Therefore, the Roundtable *recommends* that the SEC require that Part 2B

contain information about where the client can find detailed information about the supervised person's disciplinary background, as opposed to including all the details on Part 2B itself.

### Update Requirement

Requiring the RIA to update the supplement more than once per year imposes an undue compliance burden on large retail registered investment advisers. As stated above, much of the disciplinary information that the SEC proposes be included in Part 2B is already publicly available. Because the client always has access to information about a supervised person's disciplinary background, it is unnecessary for the registered investment adviser to provide updates regarding changes to this type of information. Therefore, the Roundtable *recommends* that the supplement only be required to be updated once per year.

### Description of Compensation

The language of the proposal is too vague to draw a conclusion, but the Roundtable is concerned that Part 2B Disclosure Item 4 would require specific, detailed information regarding the investment adviser representative's income. Requiring the registered investment adviser to disclose anything more than a general description of compensation the supervised person receives based on the sale of securities also imposes an undue administrative burden on dual registrants, particularly large dual registrants. Providing this level of detail and specificity would be extremely difficult to track and monitor. The Roundtable believes that the general description of compensation of the supervised person already provided in the firm brochure provides a sufficient level of disclosure. Therefore, we *recommend* that such a requirement be deleted from the final rule.

### Investment Team Supplement

In its proposal, the SEC indicates that "Advisers could also elect to prepare a supplement for each supervised person, or alternatively, they could prepare separate supplements for different groups of supervised persons (e.g., all supervised persons in a particular office or work group)." Many firms have a number of project managers that touch a single client, making it hard to match a single manager with a single client. As such, the Roundtable *recommends* that the SEC clarify that the "work group" concept also apply to investment teams, such as real estate, fixed income, etc.

### Conclusion

The Roundtable appreciates the opportunity to provide these comments on this important proposal and supports the SEC's underlying intent of providing the necessary information to customers to make investment decisions. However, we are concerned that the level of disclosure included within this proposal is at odds with other ongoing proposals at the SEC. Therefore, the Roundtable *recommends* that the SEC re-evaluate this proposal in light of the other proposals before it to maintain consistency.

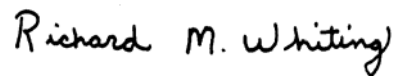
Should the SEC continue to move forward with this proposal, the Roundtable recommends that the SEC:

- Amend the annual delivery requirement for disclosures;

- Delete the requirement that registered investment advisers must determine what facts to disclose as “material changes”;
- Delete the requirement for a brochure supplement or, in the absence of such deletion, delete the requirement for registered investment advisers to disclose the name of the supervisor, the supervisor’s compensation, and the disciplinary background of the registered investment adviser; amend the term “brochure supplement” to reflect the purpose of the document; and clarify that “work group” exceptions would permit investment teams to submit supplement.

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,



Richard Whiting  
Executive Director and General Counsel