THE MONEY MANAGEMENT INSTITUTE

1140 Connecticut Avenue, NW, Suite 1040, Washington, DC 20036-4001 • Phone: (202) 822-4949 • Fax: (202) 822-5188 • www.moneyinstitute.com

May 16, 2008

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

Re: Amendments to Part 2 of Form ADV [File No. S7-10-00]

Dear Ms. Morris:

The Money Management Institute ("MMI") appreciates the opportunity to comment on the recently reproposed amendments to Part 2 of Form ADV. MMI is the national organization for the $1.7 trillion managed account industry, representing portfolio manager firms and sponsors of investment consulting programs.[1] MMI members' assets under management represent approximately 97% of the industry's total assets. Accordingly, our comments reflect the impact of the proposed amendments on investment advisers who sponsor and participate in other managed account programs, including "wrap fee" programs as defined by Commission rules.

I. Narrative Brochure Approach

At the outset, we would like to commend the Commission for proposing to eliminate the "check-the-box" format and move toward a narrative brochure designed to give investment advisers the flexibility to present information relating to their services in a clear and meaningful manner. We believe the narrative brochure approach proposed for Part 2 of Form ADV appropriately builds on the positive experience the managed account community has had with the current Schedule H. Further, we note that, notwithstanding the significant

---

[1] MMI was created in 1997 to serve as a forum for the managed account industry's leaders to address common concerns, discuss industry issues and work together to better serve investors. MMI is the leading advocate for the industry on regulatory and legislative issues. MMI members are firms that offer comprehensive financial consulting services to individual investors, foundations, retirement plans and trusts, related professional portfolio management firms, and firms that provide long-term services to both sponsor and manager firms. Information on MMI is available on the MMI website: www.moneyinstitute.com.

changes to Part 2, the content of proposed Appendix 1A is not dramatically different from the current Schedule H. We believe this is because Schedule H strikes an appropriate balance between providing information that is material to an investor's evaluation of a particular managed account program and more detail-oriented information about an investment adviser's particular business practices.

We encourage the Commission to apply a similar balancing approach in considering the breadth and scope of the disclosure requirements for Part 2 of Form ADV. Specifically, we are concerned about the number of different disclosure items, the amount of detail required in response to the various sub-parts of each item and the request for additional disclosure that explains how investment advisers mitigate or address conflicts of interest. We believe that the cumulative effect of the current reproposal will be to create a firm brochure that is lengthy and complex. Instead, we recommend that the Commission consider a shorter, more streamlined disclosure document that is more consistent both with the current Schedule H and the Commission's recent initiatives in the context of the mutual fund summary prospectus.[2]

We agree with the Commission's emphasis on the need for appropriate disclosure of conflicts and that disclosure of an investment adviser's related policies and procedures for each conflict may inundate clients with information that may not truly be helpful to them. Sponsors of wrap fee programs are on both sides of this issue in the sense that they have an obligation to disclose conflicts that are material to a client's evaluation of their services and in that they often look to a portfolio manager's Form ADV disclosures on conflicts as the starting point to a closer examination of how the portfolio manager conducts its business and manages its conflicts. Although we commend the Commission's efforts to streamline conflict disclosure to avoid discussions of a firm's policies and procedures, we think even the requirement that investment advisers "explain succinctly how they address the conflicts of interest they identify" may result in rather granular disclosure of information that may not end up being of use to investors. We note in this regard that the Commission has taken a varied approach to conflict disclosure – focusing in some cases on whether disclosure covers both the existence and dimensions of a conflict without going into details of how particular conflicts are managed. Given the importance of conflicts, it may be more appropriate instead to require that investment advisers identify material conflicts and disclose how they approach conflicts generally (*e.g.*, do they have a conflicts committee or conflicts "overseer") from a process perspective, with additional information being available on request. Ultimately, it is an investment adviser's responsibility to disclose conflicts that are material to their clients' evaluation of the adviser's services, and that disclosure can and should be accomplished in many ways (including Form ADV disclosure, client agreements, and other communications delivered prospectively or as needed as material conflicts arise).

II. Delivery Obligations

We are concerned that the various delivery obligations set forth in the reproposal will place a significant and ongoing administrative burden on investment advisers and that this burden will be increased exponentially for sponsors of managed account programs, many of whom are responsible for delivering disclosure documents on behalf of the portfolio managers

---

[2] *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Securities Act Release No. 8861 (November 30, 2007).

participating in their programs. In the current environment, wrap sponsors often assume responsibility for the initial delivery and annual offer of a portfolio manager's Form ADV and for the annual delivery of other documents like privacy notices. Under the reproposal, sponsors assuming this responsibility would also have to deliver interim amendments to the firm brochure, annual updates to the firm brochure, supplemental brochures and any updates thereto.

We expect that the operational and compliance costs associated with the need to prepare, track and continually update these documents will be substantial for all investment advisers, regardless of the advisory services they offer. We cannot overstate the substantial burden the brochure supplement requirement will have on investment advisers industry-wide. In the case of sponsors, however, the burden is multiplied by the number of portfolio managers participating in each program. Under the reproposal, sponsors will have to put in place procedures to obtain, deliver and track ongoing communications for each of the portfolio managers available through their program. In terms of sheer numbers, MMI tracks eighty-five different managed account programs representing approximately 1.6 million accounts and 750,000 individual investors. The average number of portfolio managers varies significantly based on each sponsor's strategy. Thus, the operational and compliance costs associated with managing the different documents and specific delivery requirements associated with each portfolio manager and client will be extremely burdensome. The brochure supplement requirement will also be particularly onerous for clients, many of whom entrust their assets with multiple portfolio managers and will, therefore, receive multiple versions of the firm and supplemental brochures for each of the portfolio managers managing their accounts. Thus, we believe the brochure supplement will be unnecessarily burdensome for sponsors and portfolio managers alike, while providing no meaningful benefit to clients.

In order to address this issue, we respectfully recommend that the Commission eliminate the brochure supplement entirely and rely on a "notice and access" approach to the interim and annual delivery requirements contained in the reproposal.

A. Eliminate the Brochure Supplement

With respect to the first point, the reproposal requires investment advisers to deliver a brochure supplement for each supervised person who: (i) formulates investment advice and has direct client contact; or (ii) makes discretionary investment decisions for a client's assets, even if the supervised person has no direct client contact. In the context of managed account programs, the provision of investment advice is often allocated among multiple investment advisers. For example, asset allocation and manager selection recommendation would very often be provided by employees of the sponsor, whereas the decision to invest in individual securities would be made by supervised persons of the participating portfolio managers.

Accordingly, it is quite possible that clients participating in managed account programs will have to receive multiple brochure supplements, one for the employee of the sponsor responsible for introducing the client to the managed account program and one for the employee of each portfolio manager responsible for making discretionary investment decisions on behalf of the client's account. For this reason, we believe that any benefit to providing the brochure supplement will be outweighed by the significant administrative burden it will place on investment advisers – particularly sponsors – and that the increased

volume of communications will make it less likely that clients will read the disclosure brochures. In this regard, it has been the anecdotal experience of our members that the more investors are sent a flurry of communications, the less likely they are to actually read them. Finally, we believe that many of the issues covered in the brochure supplement can be addressed in general terms in the firm brochure and do not warrant a separate disclosure document.

B. Notice and Access

We also recommend that investment advisers and sponsors be able to rely on a "notice and access" delivery model for any subsequent communications, including any interim or annual updates to the firm brochure and the brochure supplement (if the brochure supplement is not eliminated, as we recommend), that occur after the initial delivery of the firm brochure. Under this approach, clients would receive actual delivery of Part 2 of Form ADV, either in electronic or paper form depending on the client's delivery preference, at the time of entering into the advisory contract. However, clients would only be sent notice (either in electronic or paper form) of any subsequent interim or annual updates. This notice would state that an updated version of Part 2 of Form ADV is available online and would provide clients with a URL address to access the document online and a phone number to call for a paper copy. This approach is similar to that adopted by the Commission in the context of proxy materials.[3] It also builds on the annual offer requirement currently required by Advisers Act Rule 204-3(c).

C. Record Retention Requirements

Regardless of the outcome of the delivery requirements discussed above, we request clarification on the application of the record keeping requirements of Advisers Act Rule 204-2(e)(1) in the context of separately managed account programs. Specifically, in the *National Regulatory Services, Inc.* (pub. avail. December 2, 1992) no-action letter, the SEC staff noted that "an adviser may delegate to other persons, including the wrap fee program sponsor, the tasks of delivering the brochure on its behalf and creating the appropriate records." However, *NRS Letter* went on to state that where the investment adviser delegates the delivery requirement to the sponsor, the investment adviser is still obligated to maintain records of the delivery of its brochure for a period of five years, the first two "in an appropriate office of the investment adviser." We respectfully request clarification that, where the investment adviser delegates the delivery requirement to the sponsor the investment adviser may satisfy its record keeping requirement by relying on the sponsor to keep the records and provide them to the investment adviser or Commission staff promptly upon request, without the need for the investment adviser to retain the necessary records in its office under Advisers Act Rule 204-2(e)(1).[4]

---

[3] *See Internet Availability of Proxy Materials*, Exchange Act Release No. 55146 (January 29, 2007).

[4] This approach is consistent with the guidance of the Division of Investment Management in the context of private fund records maintained by an administrator. *American Bar Association* (pub. avail. December 8, 2005) (noting that "we would not recommend enforcement action . . . provided that: (i) the Administrator acts as a service provider to the adviser in maintaining, preparing,

III. Assets Under Management

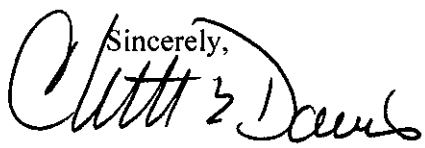
Notwithstanding our general comment above as to the length and detail of proposed Part 2, we do support the Commission's approach of including a more flexible standard for calculating assets under management ("AUM") in proposed Item 4 of Part 2 of Form ADV. We believe that permitting a different calculation methodology will permit investment advisers to develop a methodology that better reflects the services they offer. This is particular relevant in the separately managed account context where sponsors may not have assets under management in the traditional sense.

We would, however, propose that investment advisers only update their AUM on an annual basis, rather than having to update the number to reflect "material" changes if the investment adviser is otherwise updating its brochure for other reasons. As the Commission notes, AUM is a moving target that will continue to fluctuate over time and is not clear how an adviser would measure a "material" change in its AUM. Moreover, calculating and verifying the amount of AUM on an interim basis would create an additional administrative burden for investment advisers, without providing particularly meaningful information to clients.

* * *

We welcome the opportunity to discuss any of the issues contained in this letter with the Commission staff. If you have any questions or would like further information, please contact me at (202) 822-4949.

Sincerely,



Christopher L. Davis
President

---

organizing and/or updating the adviser's records for the adviser's ongoing use in its business, and does not merely provide long-term storage of the records; and (ii) upon request of the Commission's staff, the records are produced promptly for the staff at an appropriate office of the adviser or an office of the Administrator").