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NASAA

May 16, 2008

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via Email to: Rule-comments@sec.gov

Re: Release No. IA-2711; 34-57419; File No. S7-10-00
Proposed Rule and Form Amendments to Part 2 of Form ADV

Dear Secretary Morris:

The following comments are hereby submitted on behalf of the North American Securities Administrators Association, Inc. ("NASAA")[1] regarding the above-referenced rule and form amendment proposal. In summary, NASAA is very supportive of the SEC's proposal of a single form for use by state and SEC registered investment advisers and NASAA believes that overall the proposed rule and form amendments further investor protection by requiring investment advisers to provide meaningful information to investors, including an adviser's and its supervised persons' disciplinary history. We further believe that an appropriate balance of interests has been struck in that increased investor protection is achieved without overburdening the investment advisers who must complete these forms. Our specific comments as to the proposal are as follows.

Proposed Format of the Firm Brochure – SEC would require that investment advisers file their narrative brochures electronically through the IARD system for access by investors and other interested parties through the Commission's web site. NASAA supports both the electronic filing and public dissemination of Form ADV Part 2 information. As the Commission is aware, state registered advisers have been filing brochure information in IARD since April 2007. To date over 5600 state adviser filings have been processed and there has been positive reaction to the electronic system both by firm filers and the states.

Items on the Firm Brochure – SEC's proposal contains nineteen disclosure items on Part 2. NASAA was pleased to work with the SEC staff in developing these items particularly in light of

[1] NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for state regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

the fact that the proposed amended forms also will be used by state registered advisers. Therefore, the following comments are offered as refinements and clarifications of previous comments submitted to the staff.

Material Changes, Table of Contents, and Index Items - SEC proposes that advisers provide a summary of any material changes to their brochures, a table of contents to permit recipients to locate topics easily, and an index of the items required by Part 2 that would indicate where in the brochure the adviser addresses each item. NASAA concurs that each of these items is necessary so that investors and other interested parties can adequately locate the brochure's content. We further believe that a method to permit investors and regulators to navigate between versions of an adviser's brochure filings is necessary. Our experience with state adviser brochure filings received to date has demonstrated the need for an annotated summary document, index, or other technologically driven solution so that clients and regulators can easily determine the specific differences in adviser submitted filings. The narrative nature of the brochure content offers challenges to this requirement, but NASAA suggests that exploration of a technologically driven solution that would detail differences between brochure versions is an important complement to adoption of these form amendments.

Advisory Business Item - NASAA concurs with the Commission's decision not to require advisers to list all wrap fee programs in which they participate, nor to require that advisers list all reports they issue about securities. In this regard, we believe that investor protection is maintained by the requirement that an investment adviser deliver to investors a Wrap Fee Program brochure if the adviser sponsors a wrap fee program. Related information also is required to be disclosed in Form ADV Part 1 Schedule D.

Fees and Compensation Item – The Commission would require an adviser to describe how it is compensated for providing advisory services, and to describe the types of other costs, such as brokerage, custody fees, and fund expenses, that investors must pay. NASAA supports this disclosure standard as fees are an important component of an advisory relationship and adequate disclosure of fees and their structure will reduce potential misunderstanding. Given the importance of fees charged by an adviser, NASAA suggests that SEC amend Form ADV General Instruction 4 to require advisers to promptly file an updated amendment if there is a material change to its fee schedule. If an updated schedule is required only as part of the annual amendment, potential clients would not be aware of important comparable information needed, for example, when using IAPD-posted Part 2 to research and select an adviser. Further, if adopted as proposed, regulators could be using outdated information in risk assessment tools to determine oversight requirements for registrants.

NASAA notes that the issue of 12b-1 fees has received considerable attention lately. In fact, the SEC hosted a roundtable on 12b-1 fees on June 19, 2007 and the issue has been the subject of debate by regulators and industry. Although NASAA does not know the Commission's schedule and timetable for review and amendment, if any, of rules relating to 12b-1 fees, we suggest that this brochure item relating to adviser disclosure of fees and compensation be drafted in such a manner as to make it easily adaptable to SEC changes that may occur as the result of future rulemaking or other regulatory activity regarding 12b-1 fees.

Disciplinary Information Item - NASAA believes that disclosure of disciplinary information is a key component of investor protection and thus would stress the need for uniformity of disciplinary disclosure between SEC's proposed plan for adviser disclosure and other existing disclosure reporting requirements. In this connection, we would propose that parity be established between SEC's adviser disciplinary disclosure and state adviser disclosure requirements; Form ADV Part 1 disclosures (especially in the area of adjudicated events); and state released information for its broker-dealer and agent licensees. SEC, in its adviser disclosure regime, should consider that the fiduciary obligation of advisers requires, at a minimum, equivalent disclosure of disciplinary information to clients. For these reasons, NASAA would suggest that SEC review the aforementioned disclosure methods and apply a parallel standard to adviser disclosure.

To assist an investor in obtaining comprehensive disciplinary disclosure reports, SEC should not permit an adviser to rebut the presumption that the disciplinary events detailed in 9. A, B and C are material. Disciplinary events relating to convictions for theft, fraud, bribery, perjury, forgery, and violations of securities laws by the investment adviser or one of its executives should not be papered over by an adviser's creation of a file memorandum. SEC should not permit those convicted of these crimes and/or securities law violations to determine that their conviction is not a required disclosure event.

In addition, NASAA would strongly suggest that SEC require the disclosure of arbitration awards and claims as part of Item 9 disclosure. Since arbitration is the generally mandated securities forum to adjudicate client disputes, information on these claims and awards should be part of the disclosure record. It is our experience that an increased number of adviser client disputes are not now adjudicated in a court of law but in an arbitration proceeding due to the proliferation of pre-dispute arbitration clauses contained in agreements defining client relationships. Similarly, customer disputes with their advisers should be disclosed in the same manner as arbitration claims so that a complete picture of an adviser's disciplinary track record is available to potential investors.

SEC requests comment on the use of the term "involved" in Item 9 disciplinary reporting. NASAA supports SEC's proposal to continue to define the term "involved" using the same definition that currently exists in Form ADV. The current ADV definition also is used as a defined term in Form BD and Form U4. Altering the meaning of the term in Form ADV reporting would undermine uniformity and create disparate reporting between broker and adviser disclosures.

SEC also requests comment on expansion of the list of disclosure items to include, for example, all cease and desist and censure orders. NASAA believes there should be consistent disclosure and the disclosure standards detailed in item 9 should be no less stringent or encompassing than those required of registered broker dealer firms and agents.

Financial Information Item - The Note after Items 18A and 18B is an instruction for state only advisers. Because some states may move to increase the threshold, NASAA requests that SEC add one additional sentence at the end of this note to read: "Some states may have a higher

threshold, contact the appropriate state securities authorities to determine the exact dollar amount reporting threshold."

Brochure Supplement - NASAA strongly supports the requirement that adviser brochures be accompanied by brochure supplements that provide information about the advisory personnel on whom advisory clients rely for advice. In essence, this supplement would contain information about the educational background, business experience, and disciplinary history of the individual providing advisory services to the investor. NASAA also strongly supports SEC's premise for and justification of this section of the Part 2 reproposal. The types of disclosure required in the supplement are currently made by senior executives of smaller advisers who may also be the firm's primary contacts for the investor. Similar disclosure by senior executives of larger firms would not be as meaningful or useful as would a background history and disciplinary record for those individuals with whom the investor is directly dealing in the advisory relationship.

We are aware that additional disclosure reporting requirements have been met with resistance by firms to claiming burdens relating to, among other things, their cost and time to develop. In this case, however, the SEC's brochure supplement items should be readily available to an adviser for their supervised persons. This information is substantially similar to the information on Form U4, the uniform application for agent registration or transfer, and its related disclosure reporting pages already gathered as part of their application for licensing as an investment adviser representatives. In a related area, SEC requested comments on the scope of required disciplinary disclosure to include events such as cease and desist orders and arbitration claims and awards. These events should be required disclosures for adviser supervised persons and further, at a minimum, the complete set of disclosures currently contained on Form U4 should be required reporting by supervised persons.

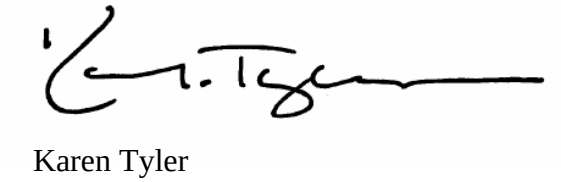
NASAA suggests that professional designations or attainments used by supervised persons should be disclosed. To mitigate SEC's legitimate concern about the existence of meaningless designations, NASAA recommends that supervised persons be required to provide a brief description of the designation which must include the qualification standards necessary to achieve the designation. Supervised persons should also be required to disclose any disciplinary action taken by a credentialing entity and the underlying facts that led to the action.

The list of brochure supplement items also includes a requirement for an adviser to describe other business activities of its supervised persons, but limits the disclosure to investment-related business activities or occupations that provide a substantial source of the supervised person's income, or that involve a substantial amount of the supervised person's time. NASAA suggests that all outside business activities of an adviser should be disclosed. Clients should know whether the adviser is engaged in such activity full time, or if the advisory activities are a "side career" that is not the primary focus of the adviser's time and attention. This inclusive standard would remove the inherent subjectivity contained in the current proposal which leaves the word "substantial" undefined.

Thank you for the opportunity to comment on this important SEC proposal and we look forward to working with the staff on future matters of common concern. Should you have any questions about these comments, please contact Patricia Struck, Wisconsin Securities Division

Administrator and Chair of NASAA's Investment Adviser Section Committee at 608-266-3432, or Melanie Senter Lubin, Maryland Securities Commissioner and Chair of NASAA's CRD/IARD Steering Committee at 410.576.6365.

Sincerely,



Karen Tyler
NASAA President and
North Dakota Securities Commissioner