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May 16, 2008

VIA E-MAIL

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

Subject: File No. S7-10-00; Release No. IA-2711; Amendments to Form ADV (Proposed Rule)

On behalf of our member companies, the American Council of Life Insurers submits comments on proposed amendments to Part 2 of Form ADV, and related rules of the Investment Advisers Act, published by the Securities and Exchange Commission on March 14, 2008, in the Federal Register. ACLI represents 353 member companies operating in the United States and accounting for 93 percent of total assets, 93 percent of life insurance premiums, and 94 percent of annuity considerations. Life insurers manufacture life insurance, annuities, and other financial products sold through independent and captive agents. The proposed amendments would have an impact on agents and affiliated entities registered under the Investment Advisers Act of 1940.

Overview of Proposed Amendments to Part 2 of Form ADV and Related Rules

The Commission has proposed amendments to Form ADV Part 2, and related rules, that affect the disclosure of information to clients and prospective clients by investment advisers who are registered with the Commission. The proposal would require two new documents. The first document, a brochure, would replace the current "check-the-box" Part 2 and Schedule F disclosure forms. Brochures would be filed electronically with the Commission through the Investment Adviser Registration Depository (IARD) and available to the public through the Commission's Investment Adviser Public Disclosure (IAPD). (In addition, advisers who sponsor wrap programs will be required to provide a specialized firm brochure, the wrap program brochure, to clients instead of the standardized brochure.) The second document, a supplement, would accompany the brochure and provide plain-English information about specific personnel who provide investment advice to a particular client. Unlike the brochure, the supplement would not be filed electronically, or publicly available, through IARD.

The brochure would be required to be provided to the client before or at the time of entering into an advisory contract, and the supplement would be provided before or at the time that advisory services are provided to the client. A current brochure with an annual summary of materials changes therein would be delivered to existing customers within 120 days of the end of the fiscal year. Updated supplements would be required if prior supplement information became materially inaccurate. However, updated supplements would not have to be provided to existing customers unless there were a new disciplinary event or a material change to previously-disclosed disciplinary events.

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If the proposed amendments are adopted, existing investment advisers would comply with the new Part 2 requirements by the date they must make their next annual updating amendment to Form ADV following the new form's effective date. New adviser applicants would not be required to include their brochures as part of their initial application for registration until the date six months after the effective date of the amendments. The Commission thereafter would require that all initial adviser registration applications include a brochure compliant with the new requirements.

A. General Comments and Recommendation

1) The Commission Should Suspend Further Consideration of the Proposed Amendments

ACLI strongly supports balanced regulatory simplification and clarification, and we have been encouraged by the Commission's efforts through the RAND Study on investment advisers and broker-dealers and its summary prospectus proposal. * Short, concise disclosure documents represent sound public policy that benefits both consumers and investment advisers. However, we also understand that the goal of the Commission in proposing this amendment is to address a perceived inadequacy in providing clear and meaningful disclosure to clients of certain business practices of investment advisers.

Unfortunately, the proposed amendments to Part 2 of Form ADV are a significant departure from the Commission's otherwise commendable efforts toward shorter, more meaningful disclosure. As a practical matter, the proposed amendments are inappropriately broad, burdensome, and vague as to be, in many respects, administratively unworkable. In addition, the proposed amendments are a disservice to clients who already have access elsewhere to much of the information to be disclosed if the proposed amendments are adopted as drafted. The added value of the required information is simply not commensurate with the volume of disclosure to be provided.

As a result, ACLI *strongly* recommends that the Commission suspend its deliberation of the proposed amendments to Part 2 of Form ADV and coordinate any further efforts with its initiatives relating to the RAND Study and the summary prospectus proposal. Integrating the conclusions and lessons learned from these initiatives will be of significant assistance in more appropriately defining the scope of proposals such as those for Part 2 of Form ADV, in clarifying compliance expectations, and in enhancing consumer awareness.

2) The Proposed Brochure Supplement Requirement Should be Eliminated

In the event that the Commission does not suspend its consideration of the proposed amendments to Form ADV Part 2 (and we recommend that it does suspend consideration), ACLI urges the Commission to eliminate the proposed brochure supplement requirement. This provision is among the more prominent examples of redundant disclosure and information overload in the proposed amendments. Given that much of the information is available in other documents or other more efficient delivery methods *(e.g.,* for dual-registrants, FINRA's BrokerCheck system), the supplement requirement will create unwieldy and costly operational burdens on large firms with thousands of supervised persons. The brochure supplement requirement should be deleted.

*RAND Institute for Civil Justice, *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers,* at http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf

Proposed Rule, Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, at http://www.sec.gov/rules/proposed/2007/33-8861fr.pdf

B. Specific Comments and Recommendations

The ordering of ACLI's concerns below is intended to assist the Commission in understanding and resolving our reservations with the proposed amendments and is not intended to reflect a prioritization as to the relative importance of our concerns. As noted above, ACLI's deep reservations about the Commission's proposal extend to a number of its specific requirements.

1) Concern: Duplicate Disclosure Requirements

Discussion: As noted above, much of the information to be disclosed as a result of the proposed amendments has no added value to consumers as it is available to consumers elsewhere. Among the duplicative disclosure requirements are:

- Proposed Part 2, Item 4: The required parent company disclosure duplicates disclosure already required in Part IA Schedule A;
- Proposed Part 2, Item 4: The disclosure of the split between discretionary and nondiscretionary is already required in Part I;
- Proposed Part 2, Item 7: Types of clients—Part I, item 5D already requires this disclosure;
- Proposed Part 2, Item 14: Payment for client referrals—Disclosure already required under Rule 206(4)-3.

Recommendation: Requirements to disclose information already disclosed or available elsewhere should be eliminated.

2) Concern: Definition of "Materiality"

Discussion: The proposed form amendments set forth no fewer than four different scenarios in which "materiality" is determinative of whether information is to be included in the brochure, the supplement, and subsequent updates of each. However, the proposal does not include a definition of materiality in these scenarios other than, in one instance, to identify a list of "presumptively material" disciplinary events for disclosure.

As drafted, the requirement for investment advisers to determine what is, and is not, material is inconsistent with requirements elsewhere in the federal securities laws (e.g., Form BD, Form N-1A). In addition, absent a definition of materiality, investment advisers can have little confidence that their conclusions will match the intent of the Commission. Overcautious investment advisers may choose to over-disclose, inundating the consumer. Also, as materiality is left to the interpretation of the investment adviser, consumers can expect wide disparities in the volume and nature of information disclosed, especially as investment advisers may often have several different types of clients for whom expectations of materiality may differ significantly.

Recommendation: The proposal should not require investment advisers to make materiality determinations. If the proposal contains any references to materiality, it should provide a definition that

parallels the definition of materiality under other federal securities law forms, such as Form BD or Form N-1A.

3) Concern: Disclosure of Fees and Compensation

Discussion: The proposal appears to suggest that a general description of an adviser's system of compensation and its policy to avoid conflicts of interest would be compliant with any new form amendments. Particularly for dual registrants with large sales forces, tracking, monitoring, and reporting with greater specificity would be extremely difficult and voluminous.

Recommendation: The proposal should not require detailed information regarding a specific investment adviser's income.

4) Concern: Disclosure of Adviser's Disciplinary Background

Discussion: ACLI appreciates that information regarding an adviser's disciplinary background may be of value to clients. However, most of the disciplinary information that the Commission proposes to include in Part B is already publicly available on FINRA's website for dual-registrants or can be delivered in more efficient alternative methods.

Recommendation: Part 2B should include information about where a client can find detailed information about an adviser's disciplinary background rather than require a recitation of details on Part 2B itself. In the event that this is not considered sufficient, advisers could be required to provide the information in a publicly accessible area of its website. These alternatives would also alleviate the need to update the brochure and supplement more than once per year.

5) Concern: Additional Disclosures Relating to Financial Planning

Discussion: The proposal requires that additional disclosures be provided if advisers hold themselves out as specializing in financial planning. This requirement unnecessarily portrays such advisers as posing a greater risk than other advisers. The stated premise for the additional disclosure is flawed in two respects. First, we question whether the assumption that "a client would like to know whether an adviser provides specialized advisory services [such as financial planning]" represents sufficient empirical support for additional disclosure. Second, while financial planning may properly be regarded by some as a "distinct profession," it is often used in the financial services industry to refer to a holistic approach to a client's finances. An adviser's acknowledgement that a client's financial interests may be broader than any one product should not subject the adviser to additional disclosure requirements.

Recommendation: The proposal should not require additional disclosures based on narrow and outdated perspectives of financial planning.

6) Concern: Disclosure regarding "All Supervised Persons Making Discretionary Investment Decisions"

Discussion: Disclosures regarding supervised persons making investment decisions of interest to clients is more meaningfully addressed in connection with disclosures regarding an adviser's investment

strategies under Item 8. Moreover, these matters are typically addressed in client documents associated with the opening of accounts and related client agreements.

Recommendation: This disclosure requirement should be deleted. To the extent that such disclosure is thought to be necessary, we recommend that advisers be permitted to identify the appropriate documents in which such information can more appropriately and effectively be conveyed (*e.g.,* account opening documents, the brochure, etc.).

7) Concern: Identification of Supervisor

Discussion: While the requirement to identify the name of the person responsible for supervising the advisory activities of a supervised person may arguably be workable in a small firm, it is not in a large regional or national firm. In a large firm, the nominal supervisor may delegate actual supervision to others. Also, supervisors may be promoted, change job responsibilities, relocate, etc. This disclosure requirement may result in investment advisers providing updated brochures to clients solely on the basis of employee turnover.

Recommendation: Institutional advisers should describe their systems of supervision in place and provide contact information for assistance. Retail advisers should provide phone numbers of customer service call centers along with telephone menu options for client concerns.

8) Concern: Delivery Requirements—Timing, Frequency, Cost, and Method

Discussion: The annual delivery requirements for the brochure and supplement overlook the logistical timeframe needed to produce them, given the number of investment advisers covered, materiality determinations, and updated background materials. It is our understanding that many investment advisers currently use the entire 90 day period following the end of the fiscal year to update and file Parts 1 and 2 of Form ADV. If the proposal is adopted as drafted, large investment advisers could easily have to proof, print, and mail hundreds of thousands of firm brochures within 30 days of completing their annual update and filing. One member company, a large retail investment adviser, has estimated annual printing and mailing costs of $2.2. million per year associated with this requirement. This would also mean that the clients of all of these advisers, many of whom may have a variety of advisory products with multiple firms, would be deluged with these mailings, all arriving at the same time.

Recommendation: As an alternative, the proposal should permit the current practice of many investment advisers to offer to deliver their firm brochures annually to interested clients rather than requiring delivery to all clients. Another option would be to adopt an “access equals delivery” approach whereby an adviser’s firm brochure is accessible to the public on its website. A third option would permit an e-mail to be sent providing the client with a website link to updated brochures. We also strongly recommend that, rather than a requirement to deliver documents on a single, fixed date following the end of the fiscal year, an option be expressly provided that instead permits advisers to tie the timing of any delivery/notification with the anniversary date of the advisory contract or the commencement of the advisory relationship, a date on which many investment advisers re-connect with their clients and re-assess financial needs. At a minimum, as the proposal appears to underutilize the availability of electronic delivery, the Commission should clarify the degree to which electronic filing would be compliant with the proposal as it has with other areas of securities regulation.

C. Miscellaneous Comment and Recommendation

Concern: Title of "Brochure Supplement"

Discussion: For industry professionals and their clients, the term "supplement" refers to updates that occur outside of the annual update process. A more descriptive term that reflects the actual purpose of the document would alleviate confusion and would likely prompt more customer interest in the document.

Recommendation: As noted above, ACLI *strongly* recommends that the Commission suspend its deliberation of the proposed amendments to Part 2 of Form ADV and coordinate any further efforts with its initiatives relating to the RAND Study and the summary prospectus proposal. ACLI has also set forth the reasons underlying its *equally strong* position that, in the event that the Commission does not suspend its consideration of the proposed amendments to Form ADV Part 2, the proposed brochure supplement requirement should be eliminated.

However, if a supplement requirement is retained,"investment adviser biography" or "fact sheet" would be more descriptive of the document. (*e.g.,* "strategy fact sheets" are already in use by most registrants for marketing purposes.) Another option would be to permit "portfolio management team profiles" that highlight the structure of the team, the strategies they manage, and the associated risks. Such an option would also alleviate administrative challenges associated with Item 8 that would require certain advisers to list strategy risks in the brochure while exempting certain other advisers (e.g., multi-strategy advisers).

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ACLI appreciates the opportunity to express it serious concerns with the proposed amendments to Form ADV and related rules of the Investment Advisers Act. We would welcome a meeting with you to discuss our comments in greater detail. In the interim, please feel free to contact me if you have any questions or need additional information.

Sincerely,

Lisa Tate