Morgan Stanley

May 16, 2008

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

Comments on Proposed Rules Regarding Amendments to Form ADV; SEC Release IA-2711 (File No. S7-10-00)

Morgan Stanley & Co. Incorporated is writing to comment on the SEC's proposals to amend Form ADV. The SEC seeks to change the ADV rules so that investment advisers can present clear and meaningful information to their clients, while minimizing the burden on advisers in preparing brochures.

In our view, some of the proposals achieve these objectives and we welcome the improvements in the client experience that will result. However, in other cases the proposals do not achieve these objectives. Especially for advisers that have many employees and/or are dually registered, some of the proposals would result in a large volume of ancillary disclosure to clients that (a) detracts from key need-to-know disclosures and (b) would be unduly burdensome on advisers to prepare.

We recognize that the SEC has legitimate reasons to ensure that certain information is available to investors, and we want such information to be available. In many cases, ancillary information is already available to clients through means other than the brochure. In other cases, we have suggested practical alternatives to make such information available to clients who wish to know it without creating an "information overload" for other clients or unduly burdening advisers - thus achieving the SEC's objectives while avoiding unnecessary burdens.

I. PLAIN ENGLISH, NARRATIVE APPROACH

We wholeheartedly endorse the SEC's proposal to move to a plain English, narrative brochure. The SEC has thoughtfully incorporated many elements that will improve brochures, such as:

- eliminating check-the-box questions
- eliminating the need to repeat information relevant to more than one item
- allowing advisers to put items in any order.

The release asked specifically whether there are disclosures best made in a tabular or other non-narrative format and whether the proposal provides sufficient flexibility to permit that type of disclosure. In our experience, plain English presentation is sometimes best achieved by, e.g., using tables (such as in setting out fee structures). Therefore, we encourage the SEC to clarify the brochure instructions to state that advisers may use tables or other forms of presentation when this would assist in clearly presenting information.

Other things being equal, we believe that a plain English brochure will be less daunting for clients than the current format. Therefore, clients are more likely to both read and understand it, furthering one of the SEC's key objectives.

II. ANNUAL DELIVERY REQUIREMENT

The SEC proposes that advisers deliver to existing clients an updated brochure annually within 120 days after fiscal year end. We believe that this proposal should be modified because:

- annual delivery by mail (given that many advisers cannot rely on electronic delivery) would be a major undertaking, creating substantial logistical challenges and costs for advisers and
- many clients are becoming increasingly resistant to receiving what they perceive to be unnecessary paperwork.

While the SEC has stated that brochures could be delivered electronically, this is not practicable for our firm at this time. Under current SEC rules, electronic delivery requires written client consent - which is not practicable for programs like ours already containing many thousands of clients who have not granted this consent (and, in many cases, also not provided email addresses). We believe that other large dual registrants have similar problems with electronic delivery.

These effects of paper delivery would be significantly magnified for wrap sponsors providing not only their own brochure, but also the brochures of third party portfolio managers in some or all of their programs. Wrap sponsors like us would face a daunting logistical task: obtain the updated brochure from each portfolio manager and then coordinate the client mailings so that each client gets an envelope with the brochures for those managers in that client's customized portfolio. (While brochures could be mailed separately, a proliferation of mailings is unlikely to be welcomed by clients.) As well as the time spent coordinating receipt of the brochures from the managers and mailing these to clients, the mailing costs would be significant. We also note that our portfolio managers have different fiscal year ends, so the 120 day time frame for delivery (discussed below) adds yet more complexity. Furthermore, we are concerned about our clients being inundated with even more documents that they did not request.

On the other hand, we believe that it is important for clients to have access to up-to-date disclosure about the programs in which they are invested. The SEC's proposal can be modified to make it workable for advisers and clients alike, and to meet the SEC's

objective, without the detriments described above. For example, advisers could be required to notify clients in writing that the annual brochure is available on the SEC's website, on the adviser's website (and give the URL) and also by other means such as written or phone request (to accommodate clients without website access). We believe that making the brochure available on the adviser's website instead of mailing it annually would in fact give clients *better* access than an annual delivery (whether hard copy or electronic delivery). Instead of a document or email that clients are likely to discard, clients can at any time easily find the brochure for their program on the adviser's website.

The requirement to deliver brochures within 120 days of fiscal year end does not allow firms, such as ours, with a November 30 fiscal year end to deliver the annual update with the first quarter performance reports if the delivery requirement is retained. Therefore, to answer the question posed by the SEC in its release, this time frame does not adequately enable advisers to minimize costs by making delivery in connection with existing mailings. The time frame should be more flexible (e.g. within 150 days of fiscal year end, or within 120 days of calendar year end).

III. SUMMARY OF MATERIAL CHANGES

The SEC proposes that advisers give clients a summary of material changes to the brochure since the last annual update. We are concerned that this proposal creates work for advisers without giving clients what they need. In our view, clients may not be well served if they believe that they need only read a summary of changes.

More specifically, we are concerned that:

- it is difficult to determine what is "material" (as, e.g., what is material to one client may not be material to another)
- clients may place undue reliance on the summary and be discouraged from reading the sections of the brochure relevant to them
- brochures will be longer (especially as advisers are likely to err on the side of caution in deciding what is material) and
- advisers will be delayed in releasing updates (as the summary can only be prepared once the rest of the brochure is complete).

We note that there is no equivalent requirement in similar regulatory regimes (e.g. mutual fund prospectuses). Furthermore, significant changes impacting clients are likely to result in amendments to a client's agreement with the adviser, in which case the client will learn about the change from whatever document the adviser sends to the client to implement the contract amendment.

If the SEC adopts this proposal, we recommend that:

- it makes clear that the summary is intended to *identify* material changes contained in the brochure, and is not a detailed explanation of new material or a substitute for reading the brochure (and clients should be encouraged to read the brochure as a whole)

- advisers have the option of producing the summary in a separate document (as it would be confusing for new clients to see the summary of changes)
- the summary be required only for the *annual* update. This is the update most likely to be of interest to existing clients. By making it more cumbersome to produce voluntary interim updates, the SEC will make it less likely that advisers will do so and
- it provides guidance or examples of the types of changes that would be considered material.

IV. BROCHURE CONTENT REQUIREMENTS

A. Client Assets (Item 4)

The SEC proposes that advisers disclose their AUM in the brochure. When updating the brochure, the adviser would update the AUM figure if this has become materially inaccurate.

We agree that clients have an interest in knowing the size of an adviser's business, represented by AUM. However, we recommend that the SEC change this requirement so that the AUM figure need only be updated as part of the annual update. As it is cumbersome for large firms to calculate AUM, the requirement to calculate AUM for interim updates will create additional work and perhaps cause delays in updating brochures – or, even worse, discourage firms from issuing interim updates. (Advisers will need to calculate AUM to determine whether a change is material, even if the change is ultimately held not to be material.)

We note that the SEC proposes to give advisers the option to use the ADV Part I methodology or else another methodology to calculate AUM. We agree that advisers should be able to select their calculation methodology along the lines the SEC proposes.

B. Disciplinary Information (Item 9)

1) Criteria for Disclosure Should Change

The SEC proposal in effect maintains the Rule 206(4)-4 disclosure requirements – with the additional requirement for advisers to maintain a memorandum in any cases where they do not disclose an incident because they believe that the materiality presumption is overridden.

This area is in need of reform. For large firms, these disclosures can be lengthy because:

- the presumptions of materiality are set very low and do not take into account firm size (e.g. $2,500 for an SRO fine, which is completely immaterial to a large firm)
- firms with wide-ranging businesses (including dual registrants) have to disclose many matters that do not impact their investment advisory business.

While the SEC states that disciplinary matters must be disclosed because of their importance to clients, we respectfully suggest that, because the net is cast too wide, the results are counterproductive. If large firms disclose many actions that, in the context of the firm's advisory business as a whole, are not significant - together with many other securities-related matters that do not impact their advisory business - the resulting pages and pages of disclosure detract from the key need-to-know information in the brochure. Under the proposals, disciplinary disclosures are likely to become *even longer* as advisers err on the side of caution in light of the new memorandum requirement.

Furthermore, lengthy disclosure in this area gives clients the impression that advisory business (compared to brokerage business) is paperwork-intensive and, in light of these disclosures (for which there is no equivalent for brokerage accounts), more fraught with problems. This could lead clients to make decisions based on wrong considerations (especially if many of the disclosures in the brochure are related to the adviser's *brokerage* business but required to be included under the advisory rules!)

If the brochure must include disciplinary information, the rules ought to be reformed to restrict disclosures to only those matters arising out of an adviser's investment advisory business, and to remove the dollar materiality presumptions so that advisers can more readily consider matters in the context of their overall activities.

2) Alternative disclosure methods

We agree that clients have a right to know about an adviser's disciplinary history. However, we believe that this objective can be met in other ways. For example, the brochure could be required to state whether an adviser has been subject to disciplinary actions and then refer clients to the DRP disclosures in ADV Part I on the SEC's website (and provide a copy of these disclosures to any clients who cannot or do not wish to access the SEC site). Furthermore, DRP disclosures tend to contain more items and are updated more quickly than Rule 206(4)-4 disclosures, so this alternative gives clients access to better disclosure without cluttering the brochure.

3) Updates on disciplinary events

We also recommend that the SEC removes the requirement to deliver updates to clients on disciplinary events. It is our experience that such mailings tend to cause confusion (as some clients are unsure whether a remedy applies to them, even though we state that we will contact them separately if this is the case). Many other clients are annoyed to receive what they consider to be irrelevant letters. Again, the fact that disciplinary matters are disclosed in ADV Part I should be sufficient (and clients could be reminded annually of this, whether in the brochure itself and/or otherwise).

Incidentally, we note that the proposed update requirement appears to require advisers to notify clients if there is a change in an action that goes *in the adviser's favor*.

In this case, the requirement to notify clients should be at the adviser's discretion if the general delivery requirement is retained.

4) Adviser "involved" in events

The SEC has asked whether matters should be disclosable if an adviser (or any of its management persons) are "involved" in certain events. We recommend that the "involved" criterion be changed. It is an overly broad criterion which could pick up, e.g., incidental conduct that is mentioned in a finding against another entity.

5) SEC administrative orders

We agree with the SEC's view that an adviser should not be required to deliver to clients copies of any SEC administrative orders issued against the adviser. As the SEC points out, it can require the delivery as part of a settlement if this is appropriate. Also, information on orders is available in ADV Part I.

6) Arbitration and civil damages

The SEC has also asked whether to require disclosure of arbitrations and damages in civil proceedings. We believe that arbitrations should not be disclosed for the very reasons the SEC points out (e.g. they do not necessarily indicate wrongdoing). Any such requirement would be particularly burdensome on large firms and considerably lengthen brochures. Many civil proceedings are already disclosable in ADV Part I.

C. Code of Ethics (Item 11)

Under the proposals, advisers must describe briefly the code of ethics and state that a copy is available on request.

Pertinent items in the code of ethics will be disclosed in the brochure in response to other items in any event. If the SEC wishes to streamline the brochure, we recommend that the brochure instead merely note that the code of ethics is available on the adviser's website or otherwise on request (and not also contain a summary of it).

D. Voting Client Securities (Item 17)

Much of the information in this item in the proposal is already disclosable, although not necessarily in the brochure. In practice, we include in our brochure certain information on proxy voting. Our client contracts also contain key information, and client elections, on proxy voting.

Given that the key information is likely to be in advisers' client contracts, we do not believe that further information is need-to-know information that must appear in the brochure. Therefore, we recommend that, if the SEC is seeking to streamline the

brochure, this information could instead be made available on the adviser's website or otherwise on request.

We also note that the proposal asks whether advisers should have to disclose how much they pay for proxy voting services. We do not see why this is relevant information for clients, and could be commercially sensitive information from an adviser's perspective. Therefore, these payment details ought not to be required disclosure.

E. Conflicts of Interest

Under the proposals, advisers must explain succinctly how they address conflicts, rather than disclose policies and procedures.

Advisers are already subject to requirements to maintain adequate policies and procedures to address conflicts. In our view, in many cases it may be difficult to explain how a conflict is addressed without describing details of the adviser's compliance program. Advisers are likely to err on the side of caution and disclose more details than are desirable from a client's point of view, thus lengthening the brochure.

We also note that, under the general law relating to fiduciaries, conflicts of interest must be properly disclosed so that clients understand the nature of the conflict. There is no further requirement to explain how a conflict is mitigated.

Therefore, we believe that the SEC should instead rely on the general law requiring disclosure of conflicts without adding requirements that may result in unnecessary disclosure.

V. BROCHURE SUPPLEMENTS

A. Effect on Investment Advisers

The most burdensome of all the proposals is the requirement for advisers to deliver a brochure supplement for each person who:

- formulates investment advice for the client and has direct client contact or
- has discretionary authority over clients assets even if no direct client contact.

There are very limited exceptions to this requirement.

As we read it, this would require each advisory representative employed at a large firm and who has advisory clients to have a brochure supplement. For firms with a network of thousands of advisory representatives, this requirement is excessively burdensome. For example, we have more than 8,000 advisory representatives of which approximately 97% have the requisite industry licenses to provide investment advisory services in the state in which they are based.

In its release, the SEC referred to the administrative burden on large firms – which it defined as those having more than 1,000 employees – in complying with the new

ADV requirements as being up to 3,300 hours initially. Most of this would relate to the brochure supplements. Of course, advisers would have ongoing costs in preparing and reviewing the brochure supplements on a regular basis. We expect that many large advisers would require the brochures to be reviewed by compliance personnel. This would require them to hire new personnel, or else decrease the time that existing personnel have for other compliance functions.

We estimate that, in the first year, it would take us somewhere in the range of 30,000-35,000 hours to comply with the brochure supplement requirement and, in following years, 8,000-10,000 hours annually.

B. Cost-Benefit Analysis

This requirement is subject to a cost-benefit analysis. Is there sufficient benefit to the client to warrant such a burden on advisers? Is there an alternative, less costly means to satisfy the SEC's objectives? Examining each brochure supplement item in turn:

- Item 1 (Cover page): We expect that, in practice, clients already receive the advisory representative's and firm's name and contact details.

- Item 2 (Educational Background and Business Experience): We expect that many clients don't care, for example, where an advisory representative went to college. Many advisory representatives as a matter of practice will explain their business background. If they do not do so, clients are free to ask about this. Furthermore, for advisory representatives registered as brokers, clients may obtain details on a broker's employment history through BrokerCheck.

- Item 3 (Disciplinary Information): For advisory representatives registered as brokers, disciplinary information is available through BrokerCheck.

- Item 4 (Other Business Activities) and Item 5 (Additional Compensation):
  - In most cases, the firm, rather than or in addition to its employees, will be registered in investment-related businesses. Therefore, the firm's disclosures on such matters in its brochure should be sufficient.
  - To the extent that advisory representatives receive compensation or other economic benefits that may constitute a conflict of interest, these must be disclosed under the general law relating to fiduciary obligations. Therefore, firms will have to disclose such matters, e.g., in their brochure and/or client contracts.
  - Advisory representatives are not independent business people. They are subject to supervision by their firm and must comply with the firm's policies and procedures. The firm's brochure will refer to the key policies and procedures of interest to clients.
  - Where advisory representatives are engaged in other business activities, this is of marginal relevance to clients, and any clients who care are free to ask about it.

- Item 6 (Supervision): General supervisory procedures could instead be described in the firm's brochure. Given that supervisors change, it is not practicable to include the supervisor's name and contact details. Rather, we recommend that the firm be required to include in its brochure a means to contact the firm (e.g. a 1-800 number) if clients have any concerns about persons who whom they are dealing.

In summary, most of the information required by the brochure supplement either already is, or could be, covered elsewhere or otherwise is of marginal benefit to the client. Adopting this proposal would divert resources from activities more likely to benefit clients and/or increase the costs of programs to clients. Therefore, on applying a cost-benefit analysis, the costs of this proposal undoubtedly exceed its benefits.

C. Alternative Disclosure Methods for Dual Registrants

Having said that, we recognize the SEC's objective of ensuring that clients have access to key information about the person to whom they are turning for investment advice. In the case of dual registrants, we believe that this objective can be met by requiring the firm to give the client, at the outset of the advisory relationship, prominent written notice of BrokerCheck, together with an explanation of how to access it and the type of information it contains. As the SEC is undoubtedly aware, clients can obtain from BrokerCheck a pdf report that provides details of a broker's:

- employment history
- securities industry registrations
- industry exams
- certain affiliations and
- customer disputes, disciplinary and regulatory events.

We believe that BrokerCheck is such a useful resource for clients that we already refer to it in our brochure. We believe that it is, in many respects, a better resource than the brochure supplements. The BrokerCheck data is updated very quickly. Furthermore, its instant availability allows clients to anonymously research a particular broker before they even meet with that broker, and to update this research at any time during the investment advisory relationship without having to ask the broker or firm for an updated brochure supplement.

Therefore, even if the SEC decides to adopt the brochure supplement requirement, we request that brokers be exempt from this requirement provided the firm makes prominent disclosure about BrokerCheck as we have suggested.

D. Effects on Wrap Sponsors

We also note that the brochure supplement requirement adds an extra layer of complexity for sponsors of wrap programs in which third party portfolio managers participate and where wrap sponsors deliver portfolio managers' materials to clients on

the portfolio managers' behalf. The sponsor would have to deliver a brochure supplement for a portfolio manager who managed portfolios alone, but not for portfolio managers who manage as part of a team (if they have no direct client contact). Therefore, if a portfolio is managed by two people and one leaves, the document delivery requirements instantly change. Furthermore, in many cases the brochure supplements will have to be mailed to clients, thus creating further costs (given that we, like many other advisers, cannot rely on electronic delivery for the reasons explained in Section II above).

In wrap programs, the clients look to the advisory representatives with whom they deal directly for advice on managers and other investment options that may be appropriate for them. Therefore, we recommend that, for wrap programs, the brochure supplement requirement (or BrokerCheck alternative) be restricted to the advisory representative with whom the client deals on a regular basis, with no "look through" to employees of portfolio managers participating in wrap programs.

VI. CONCLUSION

We appreciate the effort and thought that the SEC has put into this set of proposals. The SEC and industry have a common interest in ensuring that clients receive clear, pertinent information in a format that will encourage them to read and understand it. We also recognize the work that the SEC has put into its systems to enable the brochures to be filed electronically and made available on its website, which we view as a positive development.

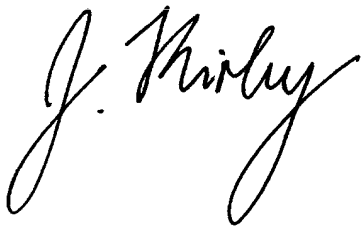
In some respects, the SEC's proposals make great strides in ensuring that clients will receive a better form of brochure. However, in our view, the SEC has not taken the opportunity to streamline the brochure so that it contains only pertinent information. Rather, many aspects of the disclosure requirements discussed above will lengthen the brochure, making it a more formidable document than it needs to be. This will make it less likely that clients will read it or focus on the key information that they need to know, thus negating one of the SEC's key objectives.

Therefore, we encourage the SEC to consider a two-tier approach and carefully examine what information need not be in the brochure itself but instead could be available elsewhere (such as on a website or, for those unable or unwilling to access a website, available by contacting the adviser).

We also respectfully request that the SEC consider the burden on advisers and conduct a careful cost-benefit analysis. This is particularly so for the brochure supplement. Given the severe initial and ongoing impact of the brochure supplement proposal if enacted in its present form, and the availability of reasonable alternatives which we believe satisfy the SEC's legitimate concerns in this area, we respectfully request that the SEC engages in further consultation with industry if it wishes to proceed with this aspect of the proposal in any form.

If you have any questions, please contact Justine Kirby, Legal and Compliance Division, Morgan Stanley & Co Incorporated, tel. (914) 225-5616, fax (914) 750-0370, justine.kirby@morganstanley.com.

Yours sincerely,



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