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May 2, 2008

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. S7-10-00
Amendments to Form ADV

Dear Ms. Morris:

The Securities and Exchange Commission (the "Commission") recently re-proposed amendments to Part 2 of Form ADV and related rules (collectively, the "Proposed Amendments") under the Investment Advisers Act of 1940 (the "Advisers Act").[1] The Proposed Amendments would require registered advisers to prepare and deliver to clients and prospective clients a brochure written in plain English and to also file the brochure with the Commission electronically through the Investment Adviser Registration Depository (the "IARD"). We appreciate this opportunity to comment on the Proposed Amendments and this important legal document. We do so on behalf of our investment adviser clients and based in part on our assistance in completing and periodically revising their Form ADVs.

I. Introduction

We support the Commission's efforts to revise the format and filing requirements for Part 2 of Form ADV ("Part 2"). We agree that the current format does not always result in clear and meaningful client disclosure and that it presents challenges for advisers in identifying and presenting all of the types of information that should be addressed in Part 2. We also believe that clients and prospective clients will benefit from the ability to access an adviser's brochure through the Commission's website. In addition, we believe that the Proposed Amendments represent a significant improvement over the changes to Part 2 originally proposed by the Commission in April 2000.[2] Nevertheless, we believe that some of the proposed revisions should be reconsidered to either provide further clarification or to strike a more reasonable

[1] *See Amendments to Form ADV*, Advisers Act Release No. 2711 (Mar. 3, 2008) (the "Proposing Release").

[2] *See Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Advisers Act Release No. 1862 (Apr. 5, 2000) (the "April 2000 Release").

balance between the amount of information provided to clients and the anticipated commitment of additional resources that would be necessary to meet the proposed requirements.

We view the Proposed Amendments as falling into three broad categories, which we address separately in this letter. First, the Proposed Amendments would add or alter certain procedural requirements placed on registered advisers, such as the frequency with which the Form ADV must be provided to clients. Second, the Proposed Amendments would change the substantive disclosures required to be made to clients and prospective clients. Third, the Proposed Amendments raise certain issues related to the registration and oversight of advisers by the Commission.

II. Proposed Procedural Requirements

A. Interim Delivery of Material Changes to an Adviser's Brochure

The Advisers Act rules currently require a registered adviser to update its Part 2 (or its "brochure") whenever information becomes materially inaccurate. Registered advisers also must annually provide or make a written offer to clients to deliver a current copy of the adviser's brochure.

In the April 2000 Release, the Commission had proposed that a registered adviser send to clients updates of its brochure whenever information in the document became materially inaccurate. The Commission would have required that an adviser provide these updates by either (1) resending its entire brochure to clients or (2) sending stickers reflecting the changes pursuant to an elaborate set of related procedures. We believe that this requirement would have resulted in the expenditure of significant resources relating to the delivery of each brochure amendment to clients.[3]

In the Proposed Amendments, the Commission has modified its approach and proposed instead that a registered adviser actually deliver a current copy of its brochure to clients annually and only make an interim delivery of its brochure when the adviser amends the document to (1) add a disciplinary event or (2) materially change information about a disciplinary event already disclosed. We support this modification and agree that this proposed approach strikes an appropriate balance between the Commission's concern that clients obtain important information about their adviser and the costs associated with providing interim amendments.

B. Electronic Delivery

In the Proposing Release, the Commission notes that a registered adviser may deliver its brochure and amendments to clients electronically with client consent. The Proposing Release also refers to interpretive guidance provided by the Commission in 1996 regarding the use of

[3] These additional resources likely would likely have included (1) the time required for legal and compliance personnel to prepare the amended brochure in a format suitable for client delivery, (2) delivery costs (which could include printing and mailing expenses), and (3) the time required for legal and compliance personnel to oversee the delivery process.

electronic media to fulfill an adviser's disclosure delivery obligations.[4] We believe that advisers will look more closely at this option as a result of the proposed brochure delivery requirements. Based on our experience in working with advisory firms, however, we believe that the Commission's 1996 interpretive guidance does not provide clear and concise guidance regarding the specific procedures that an adviser should follow in delivering its brochure and amendments electronically. We believe that this lack of clarity has limited the use of this option. Accordingly, we believe that registered advisers would benefit greatly from additional guidance summarizing the specific steps an adviser should take to ensure that the electronic delivery of its brochure and amendments are consistent with the Commission's 1996 interpretive guidance.[5]

C. Hedge Fund Clients and Investors

The Proposed Amendments would exempt a registered adviser from delivering its brochure and amendments to registered investment companies, business development companies and certain advisory clients receiving only impersonal investment advice. Moreover, a registered adviser would not be required to prepare a brochure if its only clients consisted of those entities or persons to whom an adviser is not required to deliver its brochure and amendments. The Proposed Amendments, however, do not also exempt an adviser from delivering its brochure and amendments to clients that are excluded from the definition of an "investment company" pursuant to Section 3(c)(1) or 3(c)(7) of the Investment Company Act (referred to hereafter generically as "hedge funds"). For the reasons described below, we urge the Commission to add an exemption for hedge fund clients.

As an initial matter, we observe that the Proposed Amendments and Proposing Release make no mention at all regarding a registered adviser's brochure delivery requirements with respect to hedge fund clients, including hedge fund investors. This omission seems peculiar. Hedge funds and their advisers have obviously received a great deal of regulatory attention from the Commission in recent years. Moreover, the Commission suggested in its April 2000 Release that a hedge fund adviser should provide a copy of its brochure to hedge fund investors.[6]

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[4] *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information*, Advisers Act Release No. 1562 (May 9, 1996).

[5] In particular, the 1996 interpretive guidance requires that an adviser providing documents electronically must satisfy three conditions, including evidence of delivery. The 1996 guidance states that this condition may be satisfied by an email return receipt or other confirmation that the information was accessed. The 1996 interpretive guidance also states, however, that evidence of delivery may be satisfied by obtaining the intended recipient's informed consent to delivery through a specified electronic medium and ensuring that the recipient has appropriate notice and access. We believe that the Commission should clarify or reiterate this alternative means to evidence delivery.

[6] *See April 2000 Release* at n.117 and related discussion (stating "we propose to clarify that an adviser acting as the general partner for a limited partnership must provide a brochure to each limited partner") and *Implications of the Growth of Hedge Funds*, Staff Report to the United States Securities and Exchange Commission (Sept. 2003) at n.317 (stating "[a]dvisers to hedge funds must deliver their brochures to the hedge fund investors, rather than the hedge fund itself"). *But see also* Id. at n.164 (suggesting that a hedge fund adviser could satisfy its brochure delivery requirements by "providing a copy of the PPM that includes the appropriate disclosure to an investor").

In 2004, the Commission adopted rules and rule amendments that had the effect of requiring most hedge fund advisers to register with the Commission. More specifically, the Commission's actions generally required any adviser to a "private fund" to look through the fund and count each investor as a client for registration purposes.[7] A federal court in *Goldstein v. SEC* later determined that the Commission had exceeded its rulemaking authority and vacated the Commission's rules and rule amendments.[8] The federal court's opinion also included language suggesting that a hedge fund adviser's client is the fund itself and not the investors in the fund.

Reading the Proposed Amendments in light of the *Goldstein* decision, along with the Proposing Release's lack of discussion on this topic, we believe that an adviser whose only clients are hedge funds would be required to take the following steps:

1. Prepare a brochure and amendments;
2. File the brochure and amendments with the Commission through the IARD;
3. Deliver the brochure and amendments to the hedge fund (*i.e.*, the general partner in the case of a partnership, which typically is the adviser itself); and
4. Not deliver the brochure and amendements to the fund's investors.

If this is a correct reading of the Proposed Amendments, we find this approach to be problematic. As an initial matter, we note that the information contained in a hedge fund adviser's brochure will address the adviser's dealings with its privately-offered funds and their investors, including related conflicts of interest, etc. Under the proposed approach, however, an adviser would not be required to deliver a copy of the brochure and amendments to the funds' investors. Moreover, the proposed approach would result in information about an adviser's privately-offered funds becoming available to the general public, including to a wide range of persons who are not eligible to invest in the funds or engage the firm for advisory services.[9]

In addition, we believe hedge fund advisers should not be required to provide investors with a brochure and amendments because investors typically receive substantially the same information in a hedge fund's private placement memorandum. The Commission appears to use a similar rationale for exempting delivery of the

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[7] Most advisers to hedge funds who are not registered with the Commission currently rely on (1) Section 203(b)(3), which provides an exemption from registration for any investment adviser who, in relevant part, has had fewer than fifteen clients during the course of the preceding twelve months and who does not hold itself out generally to the public as an investment adviser, and (2) related Rule 203(b)(3)-1, which provides generally that an adviser may count as a single client any legal organization (including a limited partnership) so long as the adviser provides investment advice based on the organization's investment objectives rather than the individual investment objectives of its owners.

[8] *See Goldstein, et al., v. Securities and Exch. Comm'n*, 451 F.3d 873 (D.C. Cir. 2006) ("Goldstein").

[9] Moreover, because an adviser could deem its private placement memorandum to be its brochure and because an adviser may have more than one brochure for substantially different advisory services to different clients, an adviser could end up posting its private placement memoranda though the IARD which would then be available to the public.

brochure and amendments to registered investment companies and business development companies. Thus, the proposed approach would treat advisers to hedge funds differently than advisers to registered investment companies and business development companies, even though in each case investors are purchasing a security in a co-mingled investment vehicle and receiving all material information about the vehicle (and the adviser) in a prospectus or private placement memorandum.

Finally, if the Commission is implicitly taking the position that a hedge fund – and not the funds' investors – is the adviser's client, we believe this position has greater implications for the application of the Advisers Act and rules thereunder to hedge fund advisers. For example, a hedge fund adviser might conclude that any provision in the Advisers Act or rules thereunder that uses the term "client" simply refers to the hedge fund (*i.e.*, the adviser itself), including those that call for client disclosures, consents or recordkeeping.

We appreciate the Commission's sensitivity to the issue of an adviser's obligations to hedge fund investors that was raised by the *Goldstein* decision. We further appreciate that the Commission may not wish to use amendments to the Form ADV as the moment to express a position with regard to this issue. Accordingly, we recommend that the Commission alter its Proposed Amendments to simply exempt a registered adviser from preparing and delivering its brochure and amendments to hedge fund clients. At a minimum, we believe that the Commission should address this issue directly and clarify its position. In doing so, we again reiterate our view that it should not be necessary for a hedge fund adviser to provide its brochure and amendments to investors because investors typically receive substantially the same information in a fund's private placement memorandum.

D. Brochure Supplements

The Proposed Amendments would require that an adviser provide clients with "brochure supplements" containing information about certain of an adviser's "supervised persons." The brochure supplements would be delivered along with the adviser's brochure. Advisers would be required to give each client, subject to certain exceptions, a brochure supplement for every supervised person who formulates investment advice for that client and has direct client contact or who makes discretionary investment decisions for that client's assets (or alternatively, a group supplement containing the required information about each such supervised person).

We understand that the Commission has revised its proposal since the April 2000 Release in an effort to reduce burdens on advisers who would be subject to the brochure supplement requirements. Nevertheless, we continue to note several concerns associated with this aspect of the Proposed Amendments. First, if an adviser must send its clients a brochure supplement for each person servicing the client's account, a client could ultimately receive a dozen or more supplements, or an extensive group supplement. In addition, advisers may have difficultly determining whether a particular supervised person is providing advisory services to a specific client. We anticipate that advisers will err on the side of caution and send brochure supplements for every supervised person who actually provides or may provide a client with advisory

services, even tangentially. This practice will result in clients receiving numerous brochure supplements. Consequently, clients may receive so many brochure supplements, resulting in a voluminous brochure delivery, that the additional information is more likely to obscure more important information.

Second, the requirement may lead indirectly to an increase in advisory fees. In order to satisfy the proposed requirement, an adviser would need additional compliance resources to (1) draft and assemble brochure supplements (which for some advisory firms could number in the thousands); (2) determine and track changes regarding which supervised persons provide advisory services to which clients; and (3) oversee any required client mailings or electronic deliveries. An adviser will also need additional legal resources to make determinations regarding the sufficiency of particular disclosures and which supervised persons are actually providing advisory services to which client. Moreover, distribution costs may add up quickly for advisers with hundreds of clients. We believe that these additional compliance and legal resources will result in significant costs which may be passed along to clients in the form of higher fees.

Accordingly, we urge the Commission to weigh carefully the level of interest clients have in the type and amount of information suggested in this aspect of the Proposed Amendments against the potential for client confusion, the obscuring of more significant information and increased advisory fees.[10] We note that the Commission considered a similar requirement in 1985, but declined to adopt that requirement.[11] Instead, the Commission balanced all relevant factors and adopted the current approach of requiring disclosure of information about key personnel in response to current Item 6 of Part 2. We urge the Commission to reach a similar conclusion today.

III. Proposed Substantive Disclosure Requirements

A. Proposed Format and Overall Length of the Brochure

1. General Format

As noted above, we support the Commission's proposed narrative format. We agree that this format will allow registered advisers to present information to clients in a clearer and more

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[10] In the Proposing Release, the Commission states its belief that "the information contained in the brochure supplement may be very important to clients." Our experience and that of the advisory firms we represent suggests that advisory clients are satisfied with the amount of information they currently receive. Also, as a practical matter, advisers typically provide additional material to clients or prospective clients regarding the adviser, including about the persons who will service their account, if requested.

[11] The Commission proposed and withdrew a similar requirement when it made significant revisions to Form ADV in 1985. *See Uniform Investment Adviser Registration Application Form*, Advisers Act Release No. 991 (Oct. 15, 1985). At that time, the Commission acknowledged numerous concerns cited by commentators. Commentators suggested that the brochure should be a concise document, capable of being easily understood by clients and that the requirement to include information about a multitude of individuals providing advisory services would result in the creation of a voluminous disclosure document that may confuse clients and obscure more important information. We believe that the concerns raised in 1985 regarding the potential for client confusion and the obscuring of more important information remain valid.

meaningful manner. We also support the proposed brochure instructions that will permit an adviser to (1) respond only to the items applicable to its business; (2) avoid the inclusion of duplicative information that may respond to more than one item; and (3) explain succinctly how the adviser addresses the conflicts of interest it identifies, rather than disclose its "policies and procedures," as originally proposed in the April 2000 Release. We agree that these changes will allow an adviser to craft its brochure in a manner that avoids unnecessary detail while also providing clients and prospective clients with sufficient information about the adviser.

2. Table of Contents

The Proposed Amendments would require that the brochure contain a table of contents. Every brochure and table of contents, however, would not need to follow a uniform format. We support this approach, rather than a standardized order and standardized titles for each separate section of the brochure. We believe this approach will provide advisers with necessary flexibility to best convey information about their firm to clients and prospective clients. In addition, we expect that over time a fairly standardized approach will emerge among advisory firms that will allow for reasonably easy comparison of brochures produced by different advisory firms.

3. Length of the Brochure

We believe that, implicit in the plain English mandate and overall approach to the proposed narrative format, the Commission's goal is to encourage advisers to prepare a brochure that provides sufficient information to clients and prospective clients while also remaining brief enough to encourage clients and prospective clients to read the document. While we applaud this goal, we also believe that in some cases it may be unachievable. In addition, we believe that certain actions by the Commission may undermine this goal in the future and we encourage the Commission to be mindful of this possibility.

By way of example, we note that the Commission issued the Proposing Release on March 3, 2008. The Proposed Amendments and the Proposing Release do not contain any discussion regarding an adviser's obligation to disclose its receipt of gifts and entertainment or that such receipt may be a possible factor in an adviser's selection of broker-dealers to execute client transactions. Two days later, the Commission issued an administrative order in a settled enforcement action against a registered adviser. In the administrative order, the Commission alleged generally that the adviser's Form ADV Part 2 was deficient because the document failed to disclose that the receipt of travel, entertainment and gifts were also factors in its employees' selection of brokers to execute client transactions.[12]

We believe that the Commission's decision to cite this deficiency in the adviser's Form ADV Part 2 will have the effect of causing advisory firms to consider including information about their gifts and entertainment policies in their brochures. We also believe that these types of actions by the Commission, along with proposed Rule 204-3(g),[13] will cause many advisers to

[12] *See In the Matter of Fidelity Management & Research Company*, Advisers Act Release No. 2713 (Mar. 5, 2008).

[13] Proposed Rule 204-3(g) would state that the delivery of "a brochure or supplement in compliance with [Rule 204-

include in their brochures far more information than what is required solely by the items contained in the brochure instructions. As a result, we expect that many advisers will err on the side of caution and produce voluminous brochures.

B. Disclosure of Disciplinary Events

1. General

We generally support the Commission's proposal to incorporate the requirements of Rule 206(4)-4 into the brochure, subject to the additional modifications from the original proposal in the April 2000 Release. In particular, we support the Commission's modification that would eliminate the proposal that an adviser subject to a Commission administrative order provide clients with a copy of that order. We agree that not all orders would be material to clients and that the delivery of orders should remain subject to settlement negotiations. As an additional possibility, we note that most Commission administrative orders are now posted on the Commission's website. Accordingly, the Commission could require that a registered adviser include, as part of its disclosure of material facts about a legal or disciplinary event, the Commission's website address for the Commission's order.

2. Arbitration Awards, Settlements and Claims

The Proposing Release requests comment on a potential requirement for advisers to disclose arbitration awards, settlements and claims. We urge the Commission not to adopt any arbitration disclosure requirement. Disclosure of arbitration claims or awards can be unduly prejudicial to advisers and have a chilling effect on the use of arbitration. Claims may be easily asserted, and arbitration awards can be made in cases where no violation of law has occurred. In addition, a requirement to disclose arbitration claims may provide disgruntled or unscrupulous clients with unfair leverage in forcing an adviser to pay money in pre-arbitration settlements. In any event, we believe that disclosure triggered by any amount of less than $50,000 in actual awards could lead to numerous disclosures of minor matters that do not provide clients with meaningful information.

C. Personal Trading Disclosures

The Proposed Amendments would require a registered adviser to disclose information regarding personal trading by the adviser and its personnel in response to proposed brochure Item 11.C. This disclosure requirement is similar to that currently required by Item 9 of Part 2. Proposed brochure Item 11.C, however, appears to contain a minor ambiguity that we suggest the Commission clarify. Specifically, proposed brochure Item 11.C reads as follows:

> "If you or a related person invests in the same securities . . . that you or a related person recommends to clients, describe your practice and discuss the conflicts of

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3] does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or state laws or regulations." The brochure instructions would contain a similar reminder.

interest this presents and generally how you address the conflicts that arise in connection with personal trading." (Emphasis added.)

This formulation suggests that an adviser need only address generally the conflicts of interest that arise in connection with personal trading if the adviser or a related person invests in the same securities that it or a related person actually recommends to its clients. If so, we believe that proposed brochure Item 11.C should read something similar to the following:

> "If you or a related person invests in the same securities . . . that you or a related person recommends to clients, describe your practice and discuss the conflicts of interest this presents and generally how you address the conflicts that arise in connection with personal trading under those circumstances." (Emphasis added.)

Alternatively, if the intention of the Commission is to require a registered adviser to address generally the conflicts that arise in connection with personal trading without regard to the limitation suggested above, we believe that proposed Item 11.C should read something similar to the following:

> "If you or a related person engage in personal trading, discuss generally how you address the conflicts that arise in connection with personal trading. In addition, if you or a related person invests in the same securities . . . that you or a related person recommends to clients, describe your practice and discuss the conflicts of interest this practice presents."

D. Trade Aggregation

The Proposed Amendments would require a registered adviser to disclose information regarding its trade aggregation practices in response to proposed brochure Item 12. In the Proposing Release, the Commission has requested comment on whether a registered adviser should be required to discuss whether and under what conditions it breaks up large orders to purchase or sell securities. We urge the Commission not to adopt this requirement. We believe that requiring this additional information would further extend the length of the brochure. Moreover, in our experience, registered advisers typically do not include this information in their current brochures and advisory clients typically do not request this information. Therefore, we believe that the materiality of this information does not warrant additional discussion which would lengthen the brochure.

E. Disclosure of Proxy Voting Services

The Proposed Amendments would require a registered adviser to list any proxy voting service that it routinely uses to advise it in connection with voting client securities in response to proposed brochure Item 17. We urge the Commission not to adopt this requirement. We have observed that registered advisers have come to rely more heavily on proxy voting services largely in response to the Commission's adoption of Rule 206(4)-6 in order to limit potential claims of a conflict of interest even where no such conflicts may exist. We believe that the identity of any particular proxy voting service should not be material to a client and that

mandatory disclosure of any particular proxy voting service may result in some clients attempting to influence the adviser's choice for reasons other than the competence and independence of the service. Moreover, this mandatory disclosure would likely require an adviser to update its brochure any time it adds or drops a proxy voting service. Therefore, we believe the benefits of this disclosure outweigh the additional compliance burdens and potential for clients to improperly influence the selection and retention process.

F. Balance Sheet Disclosure

The Proposed Amendments would continue to require that a registered adviser include with its brochure an audited balance sheet showing the adviser's assets and liabilities at the end of its most recent fiscal year if the adviser requires certain prepayment of fees. We question the need for the continuation of this requirement. We note that the Commission previously imposed a similar requirement for registered advisers with custody of client assets. In 2003, the Commission revised the custody rule and eliminated this requirement citing that (1) Rule 206(4)-4, which would be folded into the brochure, requires an adviser to disclose to clients and prospective clients all material facts concerning a financial condition that is reasonably likely to impair the adviser's ability to meet its contractual commitments to its clients and (2) a balance sheet may give an imperfect picture of the financial health of an advisory firm, noting that many profitable advisers have few financial assets.[14] For similar reasons, we encourage the Commission to eliminate the balance sheet requirement from the brochure.

IV. Related Registration and Oversight Issues

A. Compliance Date

In the Proposing Release, the Commission has stated its intention to provide currently registered advisers with sufficient time to prepare the new brochure. The Proposing Release further states that currently registered advisers would be required to comply with the new Part 2 requirements by the date they must make their next annual updating amendment to Form ADV following the date the revised form becomes effective. The Proposing Release adds, however, that advisers will have at least six months between the effective date and the date the next annual updating amendment is due to comply with the new requirements.

We note that the vast majority of registered advisers have a December 31 fiscal year end and therefore typically must file their annual updating amendments by March 31.[15] As a result, most registered advisers will ultimately be required to complete and submit their new brochure on the same day. We believe that requiring most registered advisers to complete and submit their new brochure on the same day may create resource and other difficulties. As noted below, we believe that the initial preparation of the new brochure (and supplements) will take most

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[14] *See, generally, Custody of Funds or Securities of Clients by Investment Advisers*, Advisers Act Release No. 2176 (Sept. 25, 2003), *citing Custody of Funds or Securities of Clients by Investment Advisers*, Advisers Act Release No. 2044 (July 18, 2002).

[15] The exact date may vary due to leap years and the possibility that March 31 may fall on a weekend or a holiday, in which case an adviser must file its annual amendment on the last business day preceding the 90-day deadline.

advisers significantly longer than the estimated 22.25 hours to complete. In addition, many of our clients have multiple entities that are each registered separately as investment advisers. Thus, meeting a single deadline for filing the new brochure will create an acute short-term drain on an adviser's legal and compliance resources.[16]

To alleviate this possibility, we suggest that the Commission adopt an approach similar to that used in 2000 for advisers to initially submit their Form ADV Part 1 through the IARD. The Commission previously adopted rolling compliance deadlines based on the last digits of an adviser's "801" registration number. We believe this approach substantially facilitated the orderly submissions of Form ADV Part 1. In addition, we believe this approach would enable the Commission staff to identify and correct any technical difficulties in the filing system, in the unlikely event such issues arise, before the difficulties affect the entire process.

B. Adviser Costs and Number of Registered Advisers

The Commission has estimated that the average adviser will need to spend 22.25 hours during the first year the adviser responds to the new Part 2 requirements. We believe that this calculation significantly understates the amount of time most advisers will need to spend redrafting their Part 2 to meet the narrative plain English format and respond to the additional disclosure items of Part 2. Based on our experience, even smaller advisers will need to spend at least twice that amount of time to prepare a well-drafted brochure.

In calculating the estimated time an adviser will spend responding to the new requirements, the Proposing Release notes that the estimate is an average that also considers the "thousands of advisers that have a small number of employees." The Proposing Release also states that there were 10,817 registered advisers as of September 30, 2007, of which approximately 82 percent have 10 or fewer employees performing advisory functions on their behalf. The Proposing Release also estimates that approximately 1,000 new applicants apply for registration as investment advisers each year.

We take this opportunity to urge the Commission to consider undertaking a review of the total number of registered advisers and whether the Commission should amend its rules to limit the number of existing and future registered advisers. In 1996, Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA") which included several amendments to the Advisers Act. The most significant amendments reallocated federal and state responsibility for the regulation of the then-approximate 23,350 registered advisers. Those amendments were intended to divide responsibilities between the Commission and the states for the oversight of registered advisers by making the states primarily responsible for smaller advisers and the Commission primarily responsible for larger advisers. The intention of this division was, in part, to put the regulatory resources of the Commission and the states to better, more efficient use. In order to do so, the amendments provided that no adviser could register with the Commission

[16] We further note that, because the Form ADV is a legal document promulgated under the Federal securities laws, third parties who advise registered advisers regarding the substantive content of the brochure must be properly licensed to do so. We believe that there may be a limited number of outside attorneys with substantial experience in this area, which may create an additional resource issue for registered advisers.

unless it had assets under management of not less than $25 million (or a higher amount that the Commission may, by rule, deem appropriate).

Pursuant to NSMIA, the Commission adopted rules in 1997 for advisers with at least $25 million in assets under management to register or remain registered with the Commission.[17] The Commission also estimated that, following the adoption of those rules, approximately 6,538 advisers would remain registered with the Commission and that approximately 750 new applicants would register with the Commission each year. In light of the total number of advisers currently registered with the Commission, those expected to register annually, and the significant number of smaller advisers registered with the Commission, we urge the Commission to consider whether it may be appropriate to raise the minimum assets-under-management threshold.[18] We believe that an overall reduction in the number of advisers registered with the Commission will allow the Commission to focus its limited resources on medium and larger advisers, as appeared to be the original intent of NSMIA, and to tailor its rules more precisely to those remaining advisers (in addition to providing more reasonable estimates of the time necessary for the average registered adviser to comply with the Commission's rules).

C. State Notice Filings and Licensing Requirements

NSMIA reserved for the states the ability to require Commission registered advisers to make "notice filings" with any state in which the adviser is "doing business." Registered advisers are generally able to satisfy the state notice filing requirements through the IARD. However, the conditions under which a Commission-registered adviser must make a notice filing in a particular state and the exemptions that may be available are not uniform.[19] This condition provides an ongoing source of confusion among Commission-registered advisers and results in substantial legal fees to advisers as they attempt to determine whether a notice filing is required in a particular state. Moreover, certain states appear to take positions regarding activities that trigger a notice filing requirement or the licensing of an "investment adviser representative" that seem at odds with NSMIA. We believe this condition undermines the purpose of NSMIA. As a result, we urge the Commission to continue to work with the states to develop a uniform approach to notice filings and exemptions and to ensure that activities triggering a notice filing or licensing of an "investment adviser representative" are consistent with NSMIA.

V. Conclusion

We support the efforts of the Commission to update and modernize Part 2, including efforts to revise the form so that it is more readable and elicits information more relevant to

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[17] *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Advisers Act Release No. 1633 (May 15, 1997).

[18] Section 203A(a)(1)(A) of the Advisers Act provides the Commission with rulemaking authority to establish a registration threshold higher than $25 million in assets under management if the Commission deems such action appropriate in accordance with the purposes of the Advisers Act. Accordingly, the Commission might consider, at a minimum, periodically adjusting the minimum asset-under-management threshold to account for inflation.

[19] For instance, many but not all states have exemptions for advisers who provide advice only to particular types of clients, including for instance, investment companies, insurance companies or institutional investors.

clients and prospective clients. Nevertheless, we are concerned with certain elements of the Proposed Amendments and urge that the Commission carefully consider their full impact prior to any final action. If you have any questions, please feel free to contact me at (212) 859-8402 or Jessica Forbes at (212) 859-8558.

Very truly yours,

Terrance O'Malley