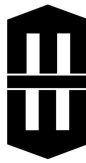


MONEY MANAGEMENT INSTITUTE

*1737 H Street, NW, 5th Floor, Washington, DC 20006 • Phone: (202) 822-4949 • Fax: (202) 822-5188 •* www.MMInst.org


August 11, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
[Letter Submitted Electronically]

Re: Amendments to Form ADV and Investment Advisers Act Rules (File No. S7-09-15)

Dear Mr. Fields:

The Money Management Institute ("MMI") appreciates the opportunity to provide its views on the Securities and Exchange Commission ("Commission") proposed rule to amend Form ADV and certain rules under the Investment Advisers Act of 1940 ("Advisers Act").[1] While we are generally supportive of the Commission's efforts to obtain additional information about investment advisers to separately managed accounts ("SMAs"), we have some concerns about certain ambiguities in the proposed rule as well as the breadth of some proposed reporting requirements. As discussed more fully below, we believe the Commission should:

- Carefully articulate when, and under what circumstances, the reporting requirements apply to different investment advisers involved in an SMA program, including sponsors, overlay managers, discretionary sub-advisers (also known as portfolio managers), and model providers;

- Not require the differentiation between investment grade and noninvestment grade corporate bonds;

- Limit all proposed reporting requirements to data as of year-end;

- Clarify that investment advisers do not need to look through to the underlying holdings of mutual funds, exchange-traded funds ("ETFs"), and other pooled investment vehicles;

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[1] Amendments to Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4091 (May 20, 2015), 80 Fed. Reg. 33718 (June 12, 2015) (to be codified at 17 C.F.R. pts. 275 and 279).

- Narrow the proposed reporting requirements regarding the use of custodians and consultants;

- Require reporting about types of clients using narrower ranges, rather than exact numbers of clients;

- Clarify that any reporting of regulatory assets under management ("RAUM") requires only a reasonable approximation rather than an actual amount;

- Coordinate disclosure about payments to employees for client referrals with the disclosure already required under Item 5 of Form ADV, Part 2B; and

- Require disclosure only of those websites and social media that are used by an investment adviser in the conduct of its investment advisory business and that are within the investment adviser's control, and not require information about the use of social media by employees.

We discuss these concerns below and provide suggestions to ease the overall reporting burden on investment advisers while still reporting information sufficient for the Commission to satisfy its stated goals.

In addition, we believe that the Commission, if it decides to adopt the proposed reporting requirements in any form, should adopt them as an interim final temporary rule with a sunset provision that would cause the rule to expire two years after the initial compliance date. This would allow the Commission and its staff to evaluate the utility of receiving the additional information about investment advisers to SMAs, and either to extend the interim final temporary rule or adopt a final rule that takes into account the Commission's experience with the interim final temporary rule. We believe this would present an effective way to understand the impact of the reporting requirements while providing the Commission with an effective mechanism to no longer require the reporting without engaging in additional rulemaking.[2]

Further, the Commission should set a compliance date at least 18 months after the effective date to allow investment advisers time to make the changes to technology systems and other processes necessary to satisfy the reporting requirements. The extensive systems changes needed to comply with the proposed reporting requirements, as discussed below, will take time to implement and finalize. We believe that investment advisers would need a period of at least 18 months to make these changes, and urge the Commission to adopt a compliance date that is at least 18 months after the effective date of any interim final temporary rule.

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[2] We note that the Commission has used this approach with respect to providing relief from the trade-by-trade disclosure and consent provisions for principal transactions under Section 206(3) of the Advisers Act for certain non-discretionary accounts. *See* Temporary Rule Regarding Principal Trades With Certain Advisory Clients, Investment Advisers Act Release No. 3893 (Aug. 12, 2014), 79 Fed. Reg. 48709 (Aug. 18, 2014) (codified at 17 C.F.R. pt. 275).

## I. About MMI and its Members

MMI is the national organization for the advisory solutions industry, representing a broad spectrum of investment advisers that manage separate accounts, as well as sponsors of investment consulting programs. MMI was organized in 1997 to serve as a forum for the industry's leaders to address common concerns, discuss industry issues, and work together to better serve investors. Our membership is comprised of firms that offer comprehensive financial consulting services to individual investors, foundations, retirement plans, and trusts; related professional portfolio management firms; and firms that provide long-term services to sponsor, manager, and vendor firms. MMI is a leader for the advisory solutions industry on regulatory and legislative issues.

## II. Information Regarding Separately Managed Accounts

As proposed, investment advisers would be required to provide in Part 1A of Form ADV detailed information about the types of assets, derivatives positions, and borrowings associated with SMAs.[3] Similar to the reporting regime under Form PF relating to private funds, the amount of detail required to be reported would be driven by the level of an adviser's RAUM attributable to SMAs. We identify below ways in which the Commission should amend the proposed reporting requirements to remove certain ambiguities, facilitate consistent reporting by investment advisers, and reduce costs.[4]

In particular, we believe the Commission should carefully articulate when, and under what circumstances, the reporting requirements apply to different investment advisers involved in an SMA program, including sponsors, overlay managers, portfolio managers, and model providers. Although the term "sponsor" is relatively well understood and defined by Commission regulation,[5] the other roles played by investment advisers in SMA programs are not similarly defined by SEC rule or regulation. In many SMA programs, either the sponsor or the client selects portfolio managers that provide discretionary investment management of client assets. In other SMA programs, the sponsor may engage various model providers to provide model portfolios, on a non-discretionary basis, that the sponsor then makes available to clients. The sponsor may also design the program to include an overlay manager to provide another layer of investment management oversight to help harmonize the strategies within an investor's SMA, increase tax and transaction efficiencies, monitor concentration risks, and—in

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[3] The Commission has stated it considers advisory accounts other than those that are pooled investment vehicles to be SMAs. We believe the Commission should clarify that an advisory account that invests in pooled investment vehicles is an SMA for purposes of the proposed reporting requirements.

[4] We also urge the Commission to consider ways to reduce duplicative data reporting for dually registered investment advisers/broker-dealers, including with respect to the proposed reporting requirements regarding branch offices.

[5] *See* Rule 3a-4 under the Investment Company Act of 1940, 17 C.F.R. § 270.3a-4(b) (defining sponsor to mean "any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program").

some cases—facilitate communications between separate portfolio managers. The proposed rule does not appear to recognize the differences in these roles.

In addition, we urge the Commission to clarify that an investment adviser would only be required to report information that is in the adviser's direct control and possession, including with respect to reporting on types of assets and the use of derivatives and borrowings, as discussed below. Where an investment adviser does not have discretionary authority for client assets, such as with respect to model providers, the adviser would be unlikely to know about specific holdings or the related amounts of such holdings in an SMA. In such cases, the sponsor may be in the best position to report this information as it will have entered into agreements with the clients and, as applicable based upon the arrangement, the custodian(s). A model provider likely would not have information about particular client holdings or, in certain arrangements, the identity of the custodian.[6]

A. Reporting on Types of Assets

The proposed amendments to Form ADV would require any investment adviser with RAUM attributable to SMAs to report the approximate percentage of SMA assets invested in each of 10 asset categories as of the end of the year. Those investment advisers with RAUM of $10 billion or more attributable to SMAs would need to report the information for the middle of the prior year and the end of the year. We are concerned that the broad asset classes proposed will unnecessarily complicate the reporting of information on Form ADV, while not providing the Commission with the kind of consistent information that would facilitate effective oversight of investment advisers to SMAs. In addition, we believe that the reporting obligations for all investment advisers with RAUM attributable to SMAs should be as of year-end.

The Commission would require investment advisers to report the percentage of assets held in ten asset categories: exchange-traded equity securities, US government/agency bonds, U.S. state and local bonds, sovereign bonds, corporate bonds–investment grade, corporate bonds–noninvestment grade, derivatives, securities issued by registered investment companies or business development companies, securities issued by pooled investment vehicles (other than registered investment companies), and other. We are concerned that the proposed reporting requirements regarding fixed income securities and the subjective distinction between investment grade and noninvestment grade corporate bonds will unnecessarily complicate reporting.

As proposed, a corporate bond would be considered investment grade if "it is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk." Currently, many investment advisers to SMAs are not required to classify their portfolio holdings in this way in regulatory reports. The subjective determination of whether a corporate bond is investment

[6] Similarly, we request that the Commission clarify that investment advisers reporting information about parallel managed accounts in Section 5.G(3) of Schedule D need to report that information only for domestic registered investment companies and business development companies.

grade will likely lead to inconsistent reporting across advisers generally, and potentially between different advisers involved in the same SMA program. For example, in the context of an SMA program, a model provider or portfolio manager may classify bonds as investment grade based on its own view of the bond while other program advisers (such as an overlay manger or a sponsor) might reach a different conclusion. We urge the Commission to not require the differentiation between investment grade and noninvestment grade corporate bonds. If the Commission determines that this differentiation is necessary and appropriate, we urge the Commission to adopt an objective definition of investment grade for purposes of the proposed reporting requirement.[7] We recognize that Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Commission to remove references to credit ratings from its rules and to substitute an appropriate standard of credit-worthiness,[8] and that the Commission has used the proposed definition of investment grade in other recent rulemakings.[9] We are concerned, however, that in the context of multi-adviser SMA programs, particularly programs where investment advisers play differentiated roles, that reporting information about corporate bonds based on subjective determinations of credit quality can result in non-standardized reporting that is conflicting and, therefore, of much less use to the Commission or to those members of the public who review Form ADV, Part 1A data. The Commission can address these concerns by adopting an objective definition of investment grade for purposes of this reporting requirement. In the event that the Commission proceeds with a subjective differentiation between investment grade and noninvestment grade corporate bonds as proposed, we suggest that reporting investment advisers in SMA programs be permitted to follow and rely on the classifications made by another program investment adviser, whether a model provider or portfolio manager.[10]

We also urge the Commission generally to narrow the reporting requirement with respect to fixed income securities to require only reporting about holdings in fixed income securities generally.[11] In comparison to equity securities, for which the Commission has proposed only one category, the Commission would require reporting of five different fixed

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[7] For example, the Commission has defined the term "investment grade debt security" for purposes of Temporary Rule 206(3)-3T under the Advisers Act to mean "a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)))." 17 C.F.R. § 275.206(3)-3T(c).

[8] Pub. L. No. 111-203, § 939A, 124 Stat. 1376 (2010).

[9] *See, e.g.*, Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption, Investment Company Act Release No. 30268 (Nov. 19, 2012), 77 Fed. Reg. 70117 (Nov. 23, 2012) (adopting this standard in the context of Rule 6a-5 under the Investment Company Act of 1940).

[10] Further, we believe the Commission should clarify that investment advisers are permitted to consider ratings of nationally recognized statistical rating organizations in determining whether to classify a corporate bond as investment grade.

[11] We also note that it is unclear how convertible bonds and preferred securities, which have attributes of both equity securities and fixed income securities, are treated for purposes of the reporting requirements.

income categories. Many fixed income strategies in SMAs involve holdings that may straddle all or more than one of the designated categories. Some investment advisers may not currently have mechanisms, including potential technological systems, that separately track the specific holdings in fixed income strategies. Requiring information in broad asset categories would reduce the reporting burden and related costs for investment advisers.[12]

Moreover, we would oppose any efforts by the Commission to require reporting based on investment strategy rather than asset category. In light of the extent and variety of investment strategies used in the SMA industry, we believe that it would be extremely difficult for the Commission to define investment strategies in a manner that provides sufficient specificity and guidance to investment advisers to permit them to report the required information accurately. We also question whether such information would be more useful to the staff in its risk assessment and monitoring programs than information about asset classes. We understand that the Commission has required private fund advisers to report information on investment strategies. As compared to private funds, investment advisers involved in SMA programs tend to be less specialized such that reporting of investment strategies would be more difficult. Private fund advisers, on the other hand, tend to be more specialized (i.e., they focus on specific strategies or investment types) and more likely to invest in illiquid securities than advisers in SMA programs. Further, SMA programs do not create, concentrate, or transmit systemic risk. Depending on their roles in the SMA industry, our members provide or facilitate the provision of investment management services to clients in ways that are designed to limit or manage risk. SMA program clients have arrangements in place for their assets to be held by banks, broker-dealers, and other highly regulated providers of custodial services that themselves take steps to limit or manage systemic risk. In addition, SMA program providers have established processes designed to monitor and mitigate the effects of those risks, thereby limiting the transmission of those risks.

We also urge the Commission to require that all investment advisers to SMAs provide this information only as of year-end. The Commission has requested comments on whether investment advisers to SMAs should be required to submit the information quarterly or every time they make an other-than-annual amendment to Form ADV. We oppose any requirements that would require reporting by any investment adviser more frequently than annually, whether at mid-year or at other points in time. Annual updates strike an appropriate balance between the benefits to the Commission and investors of the proposed reporting requirements and the burdens investment advisers would incur in collecting this information.

We believe that annual data sets would prove sufficient for the Commission to carry out its regulatory objectives, including with respect to the staff's risk assessment and monitoring programs and desire to identify and monitor trends in the assets in SMAs. With respect to mid-year and quarterly data reported with an investment adviser's annual amendment, by the time the Commission receives such information it would be stale and of limited use for the staff.

[12] To the extent that the Commission seeks additional information about either equity or fixed income securities, it might consider asking for information on domestic and foreign equity and fixed income securities.

Further, more frequent updating and filing of this information, such as when an investment adviser makes an other-than-annual amendment to Form ADV, would prevent prompt filing of such amendments as investment advisers would need to take time to calculate the additional data. More frequent updating may also serve as a disincentive to filing other-than-annual amendments where, for example, the need to amend Form ADV is unclear. In comparison, annual updates are predictable and can be planned for in terms of obtaining the required data and performing the required analyses to make the annual reports. We believe more frequent reporting would leave the Commission with data from different investment advisers using different reference points, which would actually limit the staff's ability to compare data across investment advisers.

B. Reporting on the Use of Derivatives and Borrowings

The proposed amendments to Form ADV would also require advisers with at least $150 million in RAUM attributable to SMAs to provide certain information about the use of derivatives and borrowings in SMAs. Advisers with $10 billion or more in RAUM would also need to provide additional information about the weighted average gross notional value of six categories of derivatives, and would need to report information about the use of derivatives and borrowings for the middle of the prior year and the end of the year. As discussed above with respect to the reporting requirements regarding asset classes, we oppose any requirements that would require reporting more frequently than annually, whether at mid-year or at other points in time. In addition, we urge the Commission to establish ranges for each of the proposed reporting requirements regarding the use of derivatives and borrowings and permit investment advisers to provide responses within the applicable ranges. Such an approach would balance the Commission's desire for additional information about SMAs with the anticipated costs and burdens that investment advisers in SMAs are likely to incur in satisfying the proposed reporting requirements.[13] Further, we request clarification on certain interpretive issues with respect to the proposed reporting requirements about the use of derivatives and borrowings.

We urge the Commission to clarify and confirm that investment advisers in SMAs that use mutual funds and ETFs, as well as other pooled investment vehicles, including private funds and business development companies, are not required to look through to and report the underlying holdings of those investment vehicles. As you know, SMA programs may pursue investment strategies that involve investments in mutual funds, ETFs, and other pooled investment vehicles, some of which may invest in derivatives as part of their respective investment strategies. We believe that it would be very difficult, if not impossible—and costly—for investment advisers to look through to the underlying holdings and allocate percentages of those holdings based on the percentage of the SMA program's investment in those mutual funds and ETFs and other pooled investment vehicles. Further, such reporting would be duplicative of reporting requirements for registered investment companies under the

[13] At a minimum, the Commission should clarify that these proposed reporting requirements require only the approximate number of accounts and average borrowings and derivatives exposure.

Investment Company Act of 1940 (as well as the Commission's proposed amendments to those reporting requirements).[14]

Similarly, we request that the Commission clarify that, with respect to borrowings, an investment adviser only is required to report borrowings with respect to SMA program holdings that the adviser directs to occur and are within its control. In many instances, the sponsor may permit or cause an SMA to be used as collateral, and an investment adviser acting as portfolio manager or overlay manager would not have any control over such activities. In this light, we believe it is important that the Commission clarify this reporting requirement.[15]

The Commission has requested comment on whether it should define derivative and, if so, whether to define it (a) "to include instruments whose price is dependent on or derives from one or more underlying assets" or (b) as "futures and forward contracts, options, swaps, security-based swaps, combinations of the foregoing, or any similar instruments." We take no position on whether the Commission should define the term derivative. However, if the Commission does determine to define the term, any such definition must be applied consistently across relevant aspects of the federal securities laws. In this respect, any consideration of how to define the term derivatives should be taken as a separate proposal that recognizes the broader implications under the federal securities laws (i.e., through a separate rulemaking) that provides all affected parties reasonable notice and an opportunity to comment.[16] Further, regardless of whether the Commission determines to define the term derivative, it should respect the good faith efforts of investment advisers to identify and report information about the use of derivatives.

C. Reporting About Custodians

The Commission has also proposed to require investment advisers in SMAs to identify each custodian that holds at least ten percent of RAUM and the amount of RAUM held at each of those custodians. We believe there are three ways that the Commission should amend the proposed reporting obligation to reduce the burden on investment advisers while still receiving sufficient information to meet its objectives. First, the Commission should clarify that this reporting obligation only applies to an investment adviser that maintains physical custody of client assets or arranges for custody of client assets. Typically, the sponsor of an SMA program, such as a wrap fee program, will maintain physical custody of client assets or arrange for custody of client assets through a third-party custodian (e.g., a separate custodian for IRA

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[14] *See* Investment Company Reporting Modernization, Securities Act Release No. 9776, Securities Exchange Act Release No. 75002, Investment Company Act Release No. 31610 (May 20, 2015), 80 Fed. Reg. 33590 (June 12, 2015) (to be codified at 17 C.F.R. pts. 200, 210, 230, et al.).

[15] We also request that the Commission clarify whether, and if so, under what circumstances, securities purchased on margin would be considered borrowings for purposes of this reporting requirement.

[16] We note that the Commission has requested comment on whether to define various terms for purposes of Form ADV. To the extent that the Commission chooses to define terms, it should ensure that such definitions are consistent, including with respect to interpretations and application, across all forms required under the Commission's rules.

accounts). In such situations, the other investment managers available in the program and the overlay manager may or may not know the identity of the custodian, and if they do know the custodian's identity, any reporting would ultimately be duplicative of the information reported by the sponsor. We believe that the Commission would benefit most when information about custodians is provided once (e.g., it would avoid issues regarding duplicative reporting) and permit the Commission to develop a more accurate perspective regarding the extent to which particular financial institutions act as custodians in SMAs.

Second, we urge the Commission to adopt a two-part test to the reporting requirement. Specifically, prior to any reporting requirement being triggered, the custodian should (1) have custody of ten percent or more of an investment adviser's RAUM attributable to SMAs and (2) have custody of $1 billion or more of that investment adviser's RAUM attributable to SMAs. This approach will help to reduce reporting requirements for investment advisers with lower levels of RAUM (e.g., those with less than $1 billion of RAUM) while also providing the Commission with information about those entities with custody of a large dollar amount of an investment adviser's RAUM.

Third, we believe the Commission should not require reporting of the location(s) of each custodian's office(s). Investment advisers typically know only the identity of the custodian and do not maintain information about the custodian's physical offices. We believe it would be unduly burdensome for investment advisers to provide the physical location of a custodian's office, and question the utility of such information in light of modern custodial practices, including that custody is generally an electronic recording of ownership rather than a matter of physical possession of client funds and securities.

D. Reporting About the Use of Consultants

As proposed, an investment adviser would be required to report whether its chief compliance officer ("CCO") is compensated or employed by another person for providing CCO services and, if so, to report certain information about those other employers. We understand the purpose of this proposed reporting requirement is to identify circumstances where investment advisers use so-called "rent-a-compliance officers" who serve as CCOs for dozens of investment advisers where there may be a question about the time that the given CCO devotes to each adviser and each adviser's commitment of resources to its compliance functions. While we take no position on these proposed reporting requirements as they relate to "rent-a-CCOs," we urge the Commission to revise the reporting requirement to make clear that it applies only where a CCO "is compensated or employed by an unaffiliated person for providing CCO services" so as not to pick up situations where a CCO legitimately serves as CCO for affiliated investment advisers.

In addition, we would oppose any requirements to report information about an investment adviser's use of third-party compliance auditors. We question whether information about the use of third-party compliance auditors would provide the Commission with useful information from a risk monitoring perspective because of the number of consultants and variety in the manner in which they are used. Many investment advisers use one or more third-

party compliance consultants (e.g., law firms, accounting firms, other consulting vendors) in a variety of capacities. For example, they may use third-party compliance consultants to conduct mock "audits" or provide other guidance on regulatory compliance issues. In many instances, these arrangements are confidential, such as where law firms are involved. Accordingly, the Commission should not require reporting on the use of third-party auditors.

## III. Additional Information About Advisory Business

The proposed rule would also require additional reporting about an investment adviser's business, including, among other things, the number of clients and RAUM attributable to each specific type of client (as opposed to percentage ranges), payments to employees for client referrals, and use of social media.[17] As with the proposed reporting obligations regarding SMAs, we believe the Commission should amend the proposed reporting requirements to address certain ambiguities and thereby facilitate consistent reporting by investment advisers. In addition, we believe the Commission should limit any disclosure requirements to websites and social media that are used by an investment adviser in its business as an investment adviser and that are within the investment adviser's control, and should not require reporting of information about the personal use of social media by the adviser's associated persons, including in circumstances where they identify their association with the investment adviser.[18]

### A. Reporting About Types of Clients

The Commission has proposed requiring investment advisers to report the approximate number of clients and amount of RAUM attributable to each client type in Form ADV. The Commission believes this will enhance its ability to analyze data across investment advisers and see the scale and concentration of assets by client type. The Commission has requested comment on "any benefits or concerns with using more precise numbers in Item 5, rather than ranges." Contrary to the Commission's belief, we understand that investment advisers do not have ready access to the exact number of clients and RAUM attributable to each client type. Rather, because Form ADV has historically relied on the disclosure of ranges, many investment advisers that have a large number of clients typically develop reasonable estimates of their client base for ADV reporting purposes, and do not currently have systems in place to identify approximate or exact numbers of clients and RAUM attributable to those clients. In order to provide the proposed disclosure, many investment advisers would need to revise various systems to track this information on an individual client basis.

We urge the Commission instead to amend Form ADV to require investment advisers to report information about the percentage of clients within each type of client using narrower

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[17] The Commission has proposed to require investment advisers to provide Central Index Key ("CIK") numbers in Item 1.D(3). We urge the Commission to provide guidance about what CIK numbers an investment adviser must report (e.g., all funds with a CIK or only active funds).

[18] We also urge the Commission to simplify the reporting of information about branch offices by dually registered investment advisers/broker-dealers to permit cross-references to information submitted on other forms, such as Form BR.

ranges (i.e., 10%) rather than requiring reporting of the exact number of clients. We believe this approach will provide the Commission with the same benefit of having more accurate information about investment advisers for purposes of data analytics while at the same time imposing less of a burden on investment advisers by not requiring them to report client information with great precision.[19] In addition, it would provide sufficient flexibility to address potential overlap between categories, which would present significant issues in reporting accurate information if the exact number of clients were required. Further, and importantly, the number or percentage of clients in different segments when measured on a per capita basis has less importance from a risk monitoring perspective relative to the assets and percentage of assets involved.

We also urge the Commission to provide ranges of RAUM within which investment advisers could report the approximate RAUM for each type of client, rather than actual amounts. As with the reporting on the approximate number of clients within each type of client, we understand that investment advisers do not currently have systems in place to track approximate RAUM based on particular types of clients. The proposed reporting would require investment advisers to update their internal tracking systems to ensure they appropriately identify RAUM based on type of client, and ensure that the aggregate amount of RAUM reported in Item 5.D.(2) equals the total amount of RAUM reported in Item 5.F.(2).[20] Because these two reporting obligations are linked, we believe the ultimate result will be to require exact reporting of RAUM by type of client, rather than approximations as the Commission has suggested, thereby further increasing costs for investment advisers to track and verify the information. An approach that permits reporting within ranges would alleviate some of these costs and reporting burdens.[21]

The Commission has further proposed to require an investment adviser to report the approximate number of clients to whom it provided advisory services but for whom it did not have RAUM, such as nondiscretionary accounts or clients that received a one-time financial

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[19] If the Commission insists on an approach that requires reporting of exact figures, it should permit investment advisers to use a reasonable estimation or approximation. Otherwise, investment advisers will need to spend additional time and resources ensuring the precision of their reporting in order to avoid potential liability under Sections 204 and 207 of the Advisers Act.

[20] *See* Instruction to Item 5.D.(2) of Form ADV, Part 1A.

[21] We also note that other items of Form ADV, Part 1A appear to require calculation of the exact amount of RAUM. For example, Item 5.I.(2) asks "If you participate in a wrap fee program, what is the amount of your regulatory assets under management attributable to acting as (a) sponsor to a wrap fee program [and] (b) a portfolio manager for a wrap fee program?" Similarly, Section 5.G.(3) of Schedule D asks investment advisers to "Provide the regulatory assets under management of all parallel managed accounts related to a registered investment company or business development company that you advise." Section 5.K.(3)(f) of Schedule D asks "What amount of your regulatory assets under management attributable to separately managed accounts is held at the custodian?" As with the proposed reporting requirements regarding the use of derivatives and borrowings in SMAs, we urge the Commission to provide ranges for each of these proposed reporting requirements (or, at a minimum, to require that investment advisers report the approximate RAUM for each of these questions). Such an approach will balance the Commission's desire for additional information about SMAs with the anticipated costs and burdens that investment advisers in SMAs are likely to incur in satisfying the reporting requirements.

plan. We request clarification that, in responding to this proposed reporting requirement, an investment adviser would need to include any client that is excluded from the adviser's RAUM calculation. In addition, consistent with our comments above, we urge the Commission to require reporting on these other clients using ranges, consistent with the current approach under Item 5.C. If the Commission determines that the ranges currently used are insufficient, it could look to Item 5.H of Form ADV, Part 1A, which requires an investment adviser to indicate how many clients it provided financial planning services to in the last fiscal year using broad ranges (i.e., 0, 1–10, 11–25, 26–50, 51–100, 101–250, 251–500, more than 500). Where there are more than 500 such clients, the investment adviser should be permitted to provide an approximate number of clients rounded to the nearest 500.[22]

We note that Item 5.I(2) would require an investment adviser to report the amount of RAUM attributable to acting as a (1) sponsor or (2) portfolio manager in a wrap fee program. Many investment advisers, including dual registrants, may act as both the sponsor of, and a portfolio manager in, the same wrap fee program. We urge the Commission to include a third line (i.e., Item 5.I(2)(c)) requesting information where an investment adviser acts as both a sponsor and portfolio manager in a wrap fee program, which would help to avoid issues with double counting assets and potentially reduce reporting burdens. Alternatively, the Commission should provide clear guidance as to how a dual registration would report the requested information when acting as both sponsor and portfolio manager.

B. Payments to Employees for Client Referrals

The Commission has also proposed to amend Item 8.H to require investment advisers to disclose whether they, or any related person, directly or indirectly provide "any employee compensation that is specifically related to obtaining clients for the firm (cash or non-cash compensation in addition to the employee's regular salary)." We believe that the proposed clarification is highly subjective, and that the Commission would receive more accurate information if it were to use an objective standard that addresses compensation that is directly based on an employee's obtaining clients for the firm. Clients understand that it is beneficial for an investment adviser's employee to obtain clients for the adviser or to sell products or services to clients, and that investment advisers likely consider an employee's success in obtaining clients for the firm in determining compensation. We generally question why the Commission needs this information as part of Form ADV, Part 1A, as it is already required to be disclosed in brochure supplements. If the Commission determines to adopt this proposed requirement, we suggest the Commission revise Item 8.H(2) to mirror the required disclosure in Item 5 of Form ADV, Part 2B. This will provide more clarity about the required reporting and in a manner that investment advisers are already required to track with respect to supervised persons. Specifically, Item 5 of Form ADV, Part 2B requires disclosure "[i]f someone who is not a client provides any economic benefit to the supervised person for providing advisory services" and clarifies that economic benefits include sales awards and other prizes, including "[a]ny

[22] Further, as mentioned above, information on the number of clients when measured on a per capita basis has less importance from a risk monitoring perspective relative to the assets and percentage of assets involved.

bonus that is based, at least in part, on the number or amount of . . . client referrals," but not the supervised person's regular salary or other regular bonuses.

C. Websites and Use of Social Media

Further, the Commission has proposed to require an investment adviser to indicate whether it has one or more websites or uses social media, and to provide the website address for all such sites. The Commission is also considering whether to require an investment adviser to provide information on the use of social media by its employees.[23] Should the Commission decide to require reporting on websites and the use of social media, we urge the Commission to limit any disclosure requirements to websites and social media that are used by an investment adviser in its business as an investment adviser and that are within the investment adviser's control. There are many websites that reference investment advisers and other financial institutions that are outside the control of the entities identified or mentioned, and that investment advisers may not even be aware exist. We do not believe an investment adviser should be required to identify or track independent/third-party websites. Further, we believe the Commission should not require reporting of information about the personal use of social media by an investment adviser's associated persons. We believe that tracking and reporting such information would be unduly burdensome for investment advisers, including larger advisers with hundreds or thousands of associated persons.

## IV. Conclusion

Thank you again for the opportunity to provide our comments on the proposed amendments to Form ADV and Advisers Act rules. Should you have any questions or require additional information, please contact Craig Pfeiffer, MMI President & CEO, at (

Respectfully submitted,

Craig Pfeiffer
President & CEO
Money Management Institute

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Mr. David Grim, Director, Division of Investment Management

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[23] Specifically, the Commission has requested comment on whether it should require an investment adviser to indicate whether it permits employees to have social media accounts associated with the adviser's business and, if so, to report the number or percentage of employees that have those accounts.