LPL Financial

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August 11, 2015

By Electronic Mail to rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Mr. Fields:

LPL Financial LLC ("LPL") appreciates the opportunity to provide these comments on the Commission's proposed amendments to Form ADV and Investment Advisers Act rules ("Proposal").[1] As an initial matter, LPL wishes to express its support for the Commission's continued efforts to make Form ADV an effective, meaningful, and helpful disclosure document for investors. It is clear that one of the goals of the current rulemaking is to ensure that Form ADV meets the overarching objective of providing investors with relevant and understandable information regarding an investment advisory firm and its activities.

We also support the Commission's ongoing efforts to bolster its activities relating to systemic risk. The current rulemaking derives in significant part from the Commission's desire to enhance its programs to detect and assess potential risks posed by investment advisory activities. For example, the rationale underlying the Commission's proposals to collect information about separately managed accounts ("SMAs") is "to enhance [the Commission] staff's ability to effectively carry out [its] risk-based examination program and other risk assessment and monitoring activities…"[2] Accordingly, our comments on aspects of the Proposal are based on the premise that the information sought should appreciably augment and benefit the Commission's systemic risk programs.

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[1] *Amendments to Form ADV and Investment Advisers Act Rules; Proposed Rule*, File No. S7-09-15; 80 Fed. Reg. No. 113 (June 12, 2015).

[2] *Id.* at 33720.

I. OVERVIEW OF LPL

LPL is registered with the SEC as an investment adviser, and as of December 31, 2014, had approximately $116 billion in regulatory assets under management, approximately $114 billion of which is discretionary, and approximately $2.6 billion of which is non-discretionary. As of that same date, LPL had more than 500,000 investment advisory client accounts. While we are also a registered broker-dealer and custody many of our investment advisory client assets, a portion of the client assets are managed by other investment adviser firms and maintained at other custodians. We offer a variety of investment advisory services, including discretionary investment advice, wrap programs, mutual fund asset allocation programs, separately managed account programs, financial planning, and retirement plan consulting. We also make recommendations and provide advice to clients with respect to investment advisory programs and services offered by third party investment adviser firms. In the case of third party investment advisory programs and services, the role of LPL and its investment adviser representatives ("IARs") is to recommend the third party investment adviser and provide ongoing client servicing. In these types of accounts, LPL and its IARs typically do not have investment discretion or select the investments.

LPL Financial has over 11,000 IARs who provide investment advice on our behalf. Unlike traditional investment adviser firms, whose representatives are typically employees of the firm, our IARs are independent contractors. Many of our financial professionals are small business owners and entrepreneurs and they are primarily located in rural and suburban areas. Operating as small businesses, our financial professionals often form personal and long-standing relationships with their clients and communities. LPL Financial and its affiliates have more than 3,300 employees.

II. COMMENTS AND RECOMMENDATIONS

A. SEPARATELY MANAGED ACCOUNTS (ITEM 5)

The Proposal includes significant new Form ADV reporting requirements relating to SMAs.[3] As noted above, we appreciate the Commission's basic rationale for seeking this information. We recommend the Commission consider certain changes to reduce some of the challenges in collecting, categorizing, and reporting this new information.

The Proposal requires advisers that report regulatory assets under management ("RAUM") attributable to SMAs of at least $10 billion to complete Section 5.K.(1) on Schedule

[3] *Id.* at 33719. SMAs are advisory accounts other than those that are pooled investment vehicles (*i.e.*, registered investment companies, business development companies, and private funds).

D.[4] As proposed, it would require an adviser to indicate the approximate percentage of SMAs attributable to ten categories of assets.[5]

Our analysis indicates that LPL's advisory accounts fall within the Proposal's definition of SMAs. Thus, the Proposal will require us to collect and report information regarding hundreds of thousands of advisory accounts that pertain to a variety of securities. Each account's assets will need to be analyzed according to the Proposal's categories. We are concerned that the revised Form ADV Glossary defines the category of "investment grade" in a way that is not susceptible to a quick, easy, or definitive determination.[6] As such, the judgment calls needed to determine whether to classify assets as "investment grade" may result in inaccuracies or inconsistencies among different investment advisers and create unnecessary potential risks for reporting advisers. Accordingly, we recommend that the Commission provide a brighter line test for, or eliminate the distinction between, "investment grade" and "non-investment grade" fixed income securities, to avoid confusion by advisory firms and enhance the overall accuracy of information provided to the Commission.

For some of LPL's advisory accounts, an unaffiliated third party investment adviser ("TPIA") serves as the discretionary investment manager responsible for selecting the securities and executing transactions in the client's account. Although LPL is also an investment adviser on the account, LPL does not exercise discretionary investment authority over the securities purchased and sold in the account. Instead, LPL's responsibilities include the recommendation of the TPIA, assisting the client in the selection of an investment strategy for the account based on the client's investment objectives, and monitoring the performance of the TPIA. The TPIA is solely responsible for the investment selection and execution of the transactions and has the greatest control of information required to categorize the client's assets. In instances where there are two RIAs on an account, we suggest that Form ADV requirements related to asset categories should apply to the adviser who exercises investment discretion.[7] This would result in more accurate information by avoiding duplicative reporting from another adviser. Since the ultimate goal of collecting SMA information is primarily to assess potential systemic risks, we believe that increasing the accuracy of such information is paramount.

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[4] *Id.* at 33807. Due to the fact that LPL's SMA assets exceed $10 billion, the Proposal will require us to submit both mid-year and year-end information in our annual filing.

[5] LPL strongly supports the Proposal's consistent use of "approximate" throughout Item 5. We believe that minor deviations will not obscure a meaningful examination of the requested information.

[6] *See supra,* note 1, at 33775. "A security is 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."

[7] We suggest that the Commission consider whether these asset categories should apply to non-discretionary accounts at all, given the diminished systemic risk involved with such accounts. According to recent Form ADV data, non-discretionary assets account for less than 10 percent of all reported RAUM. *See, 2015 Evolution/Revolution: A Profile of the Investment Adviser Profession,* Investment Adviser Association and National Regulatory Services.

In summary, we certainly appreciate the basis of the Commission's proposed changes to require extensive information relating to SMAs. Given the complexities of these new requirements, however, we request that the Commission ensure that there is sufficient time for advisory firms to implement the procedures and systems needed to comply fully with all provisions of the new regulations. Therefore, we recommend that the earliest effective date should apply to Form ADV annual updates required after December 31, 2016. In addition, the Commission has requested comments on the frequency of collecting SMA data. We suggest that requiring year-end data for larger advisers, without requiring the mid-year report at the same time, will enable the Commission to identify and assess any potential systemic risk issues relating to SMAs and balance the potential reporting burden on such advisers. Once the new reporting requirements are in place, the Commission will be in a better position to assess the utility of any additional reports.

B. ADDITIONAL INFORMATION REGARDING INVESTMENT ADVISERS (SOCIAL MEDIA AND OFFICES)

The Proposal requires additional identifying information from all investment advisers. For example, new Part 1.I. requires an advisory firm to report whether it has one or more websites for social media platforms used by the firm.[8] The Proposal asks a number of questions relating to social media, including whether the Commission should collect additional social media information, whether Form ADV should ask advisers if they permit employees to have social media accounts associated with the advisers' business, and whether the Commission should ask advisers to identify the number or percentage of employees that have these types of accounts.

We believe the Proposal strikes an appropriate balance with respect to social media information. Requiring an advisory firm to list its social media sites may prove useful to both investors and the Commission. In contrast, requiring firms to list social media accounts of individual employees (including independent contractors) would result in extremely lengthy lists of information that could reduce the effectiveness and readability of Form ADV for investors and result in a significant burden for advisory firms.

We also believe the Proposal strikes an appropriate balance regarding the number of offices that will be required to be listed on Schedule D.[9] LPL falls in the category discussed in the Proposal of an advisory firm with numerous offices. The proposed listing of 25 of our largest offices (by number of employees) will provide ample information to investors and the Commission and certainly will not preclude the Commission from seeking additional information regarding any or all other offices.

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[8] *Supra,* note 1, at 33782.

[9] *Id.* at 33804.

C. ADDITIONAL INFORMATION ABOUT ADVISORY BUSINESS (ITEM 5)

The Proposal includes amendments to Item 5 requiring advisers to provide the actual number of clients and specific amount of RAUM attributable to each category of clients as of the date the adviser determines its RAUM.[10] As described in the Proposal, these amendments will replace the current ranges set forth in Item 5.[11]

We agree that it will be beneficial for the Commission to be able to collect more accurate data relating to the scale and concentration of assets by client type. We recommend, however, that the Commission request the "approximate" number of clients and "approximate" amount of RAUM attributable to each client type in Item 5.D. This revision would be fully consistent with similar information that will be required pertaining to an adviser's employees and its clients.[12] Given the sheer number of our advisory clients and client accounts, that clients and assets can fluctuate, and that some of this information will have to be collected from third parties, we believe this modest modification will provide the Commission with the information it seeks without penalizing an adviser for minor or inadvertent inaccuracies.

D. PROPOSED AMENDMENTS TO BOOKS AND RECORDS RULE

The Proposal also includes amendments to the Advisers Act books and records rule. The Proposal would require advisers to maintain all written communications sent and received relating to the performance or rate of return of any or all managed accounts or securities recommendations. The Proposal also would require advisers to maintain records of all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly (currently, the rule only requires such records with respect to communications to 10 or more persons). The proposal also asks for input regarding current practices, concerns about the proposed new requirements, and possible alternatives and exceptions.

We agree that the veracity of performance information is important regardless of whether it is a personalized client communication or in an advertisement sent to ten or more persons. We support the Proposal's amendments to Rule 204-2(a)(7) to maintain communications relating to performance, whether in an advertisement or one-on-one client communication. We believe this requirement will achieve the goal of providing the SEC's examination staff with additional information and thereby protect investors by reducing the incidence of misleading or fraudulent communications.

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[10] *Id.* at 33788.

[11] *Id.* at 33723.

[12] *Id.* at 33787-33788. Item 5, sub-items A, B, and C all request approximate numbers.

With regard to Rule 204-2(a)(16), we suggest, as an alternative, that the Proposal provide an exception from the requirement to maintain documentation to substantiate returns, for communications addressed to a single client regarding that client's particular account or a security in the account.[13] Such an exception would provide the Commission's examination staff with information needed to detect potentially misleading or fraudulent communications, while reducing any operational or administrative issues related to maintaining supporting documentation for "one-off" communications between a client and the IAR. We believe that a requirement to maintain all communications that relate to performance – whether in an advertisement or personalized communication – and to further maintain documentation to substantiate the calculation of the performance returns in communications to more than one person, would meet the Commission's stated goals and provide additional protections for investors.

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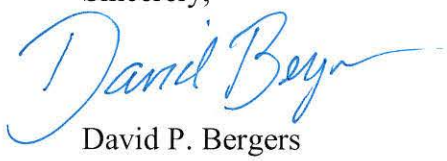
We truly appreciate your consideration of these comments. We respectfully submit that the recommendations discussed in this letter will help to clarify the new rule requirements while fulfilling the key purposes underlying the Proposal. We would be pleased to provide additional information regarding any of these issues. If you have any questions regarding this letter or would like to discuss any of these points further, please do not hesitate to contact me.

Sincerely,



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[13] Clients commonly request performance information at intervals other than quarterly or year-end intervals, or request return information for a particular security in the account, and for IARs to respond to such a request in an email or letter. This information would not necessarily be set out in the standard quarterly reports that show performance for the entire account. To respond to the client request, an IAR could calculate the return using a variety of different methods, such as an online tool or a spreadsheet.