These comments are filed in response to the Securities and Exchange Commission ("SEC" or "Commission") proposed rule to modify Form ADV and related regulations in Release No. IA-4091, File No. S7-09-15, RIN 3235-AL75, 80 Fed. Reg. 33718 (June 12, 2015). As a registered investment adviser, we believe that we understand the Commission's motivations for collecting additional data through the Form ADV, but we have provided responses to the Commission's specific questions where we have input to offer.

In general, we would not object to providing certain specific information to the SEC to support its mandate to monitor systemic risk, but in light of § 210(c) of the Investment Advisers Act, we would not support publishing the data in a form that materially differs from what is currently published today.

Additionally, the specific information requested, along with the proposed amendments to the recordkeeping rules, would require substantial changes to underlying software, hardware infrastructure, and compliance policies and procedures. Thus, to the extent the Commission finalizes some version of this proposed rule, we recommend an implementation period of at least 24 months from the date of publication of a final rule.

Advisers would be required to update separately managed account information annually. Should we require more frequent reporting, such as quarterly reporting?

> No. Advisers would be required to update separately managed account information manually until appropriate software and reporting tools can be developed or modified under the proposed rule. This could take years, and would cost tens if not hundreds of thousands of dollars in software development and staff training costs per adviser.
>
> While the Commission has accounted for the extra time required to input the data into the Form ADV, the proposed rule does not reflect the complexity of gathering and calculating the underlying data, particularly in the case of accounts that span multiple asset categories. Gathering and calculating the underlying data would require hiring additional staff to appropriately categorize (and continuously audit the categorization of) separate account client and asset classes. To do this on a quarterly basis would be unduly burdensome.

Should an adviser be required to update information on separately managed accounts any time the adviser files an other-than-annual amendment to Form ADV?

> No. In the event of an other-than-annual amendment, there are likely significant other matters underway (such as systems integration in case of a merger) that would impede an adviser's ability to timely update and report data on separately managed accounts. As suggested above, updating these data would require running essentially real-time reports based upon "ten broad asset categories" across thousands of separate accounts, with no demonstrable benefit to justify the burden.

Is it appropriate to require semi-annual data in annual reporting instead of semi- annual reporting for advisers that manage at least $10 billion in separately managed accounts? Why or why not?

> Yes. Annual reports with semi-annual components would be more manageable than semi-annual reports.

In order to better understand the use of derivatives in separately managed accounts, would we need more data points from each adviser than the annual and semi-annual proposed data points? Why or why not?

> The proposed data points are sufficient to enable the SEC to evaluate potential for systemic risk.

Are the $10 million, $150 million and $10 billion thresholds appropriate? Why or why not? Should we require advisers that manage less than $150 million in assets under management attributable to separately managed accounts to report additional information about those accounts or report semi-annual information?

> Regardless of whether these thresholds are appropriate, the reporting requirements are not proportional. It is significantly more difficult for larger advisers to produce the requested information. As assets under management increase, the complexity of the accounts increases, making it substantially more difficult to attribute assets to specific categories, particularly with complex client relationships where a single client's assets may be spread across multiple categories. Thus, it would likely be easier and less expensive for smaller advisers to report this detailed information.

Should we ask about the investment strategies used in separately managed accounts as opposed or in addition to asset types? If so, how should we define the investment strategies so that information reported to us is meaningful? Should we use some or all of the investment strategies listed in Form PF for private funds? Is there other information about separately managed accounts that we should consider instead?

> No. It would be difficult to meaningfully define a single "investment strategy" for many managed accounts, and the instructions on the Form PF prohibit blending strategies. Thus, although the Form PF strategy definitions may be somewhat reasonable for limited purpose private funds, for other separately managed accounts, investment strategies are more difficult to define. We ask the Commission to clarify what it is trying accomplish by collecting this information. If the Commission were to adopt the Form PF strategy definitions, it would need to add a "multi-strategy" option.

Is there any overlap among the proposed asset types? If so, which particular types? Are there any additional asset types that should be included?

> Yes. For example, derivatives would overlap with many of the other asset types unless the Commission clarifies that derivatives should not be attributed to their underlying assets.

Would disclosure of aggregate holdings, derivatives and borrowings in separately managed accounts raise concerns, in light of Section 210(c) of the Advisers Act, regarding the identity, investments, or affairs of any clients owning those accounts when clients are not identified? If so, please explain, and address whether there are ways in which the Commission could address these concerns and still request comparable information.

> Yes, the disclosure of such information would raise concerns regarding the privacy and security of investors. In light of § 210(c), disclosure of this information is not a necessary or appropriate way to assess potential systemic risk. Even "aggregated" information can, depending on the context, provide indicators sufficient to reveal client identities or investments.

Would the disclosure of information about separately managed accounts in the aggregate be useful for risk monitoring and data analysis purposes? Why or why not?

> Limited and confidential disclosure of such information to the Commission could be useful for risk monitoring and data analysis purposes by allowing the Commission to help identify correlations between known risky behavior and the composition of separately managed accounts. However, the public disclosure of this information, could, as noted above, threaten the privacy and security of an adviser's clients without appreciable benefits.

Are gross notional exposures and gross notional values appropriate measures of the use of derivatives? Are there alternative or additional measures that we should consider?

> We encourage the Commission to set a minimum gross notional amount (combined exposures and values) in relation to an adviser's overall assets under management in order to be reportable. For example, if gross notional exposures and values account for less than 10% of an adviser's total AUM, they should not be reportable because they are unlikely to present a systemic risk.

Would the disclosure of information about separately managed accounts affect or influence business or other decisions by advisers?

> Yes, it could. To protect client privacy under the proposed public disclosure requirements, advisers would be incentivized to pursue investment vehicles that would

further aggregate separately managed accounts, thus rendering the proposed changes meaningless.

Is ten percent an appropriate threshold for information on custodians that serve a significant number of separately managed accounts? Should it be higher or lower? If so, why?

We believe that ten percent would be a reasonable threshold given the rationale expressed on page 33721 of the proposed rule.

Would the disclosure of information about separately managed accounts affect or influence business or other decisions by advisers?

Yes. As suggested above, advisers would have strong incentives to develop investment products or strategies that would better allow them to protect client confidentiality, and thus, reduce the data made available to the SEC under this proposed rule as currently drafted.

Is there additional information we should collect that would assist us in learning more about separately managed accounts?

No.

Is the information required to answer these proposed questions readily available to advisers? If not, why?

Some activities may be comparatively rare for some advisers, yet exceed the currently proposed thresholds. These activities, while closely monitored internally, may require the manual generation of reports in order to adhere to the proposed rule. Thus, as suggested above, we suggest that in addition to an account level threshold, specific transaction types should need to exceed, in the aggregate, a certain percentage of an adviser's overall AUM to limit reporting on de minimis activities that are unlikely to pose a systemic risk.

<u>We request comment on the proposed changes to Item 1 of Part 1A and Section 1 of Schedule D.</u>

Are there concerns with providing all CIK numbers assigned to an adviser? If so, please explain those concerns.

No, we have no concerns with providing all CIK numbers assigned to an adviser.

Is there additional social media information that we should collect? Should we ask advisers whether they permit employees to have social media accounts associated with the advisers' business? And, if so, should we ask advisers to identify the number or percentage of employees that have those accounts? How burdensome would it be for advisers to report that information?

We request that the Commission clarifies what it means by “associated with the advisers’ business,” for example, whether this includes listing an employer in one’s profile or “liking” an employer’s page. If so, that information (which should be assumed true) would likely not be particularly valuable.

More relevant and answerable questions would be:

Does the adviser restrict posting to social media from within its computer network?

What is the percentage of employees with access to social media accounts who are authorized to post from within the adviser’s network? (Ranges of 0%, 1-10%, 11-25%, 25-50%, 51-75% 76-100%)

Are such posts subject to compliance review?

As proposed, information would be required regarding an adviser's 25 largest offices. We selected 25 in order to balance the burden to investment advisers with providing this information with our need for information about additional offices. If instead we were to require all offices to be reported, would the burden on advisers be significant? Should we decrease the number of offices or provide another standard to identify the offices that should be reported?

The five largest offices should be sufficient for advisers with fewer than 25 offices. The number of employees engaged in advisory activities could be a useful metric.

Would additional information about an adviser's offices be helpful to investors? Why or why not?

No. Investors who have access to an ADV have access to the internet, where the information is or should be readily available.

In addition to the identification of outsourced chief compliance officers, should we also request information about advisers' use of third-party compliance auditors? If so, what information should we request?

Relationships with third-party compliance auditors are often confidential. If the Commission were to request data on use of third party compliance auditors, we believe it should be a simple voluntary question: “Have you used a third party compliance auditor during the reporting period?” There should be three options: “Yes,” “No,” or “Decline to answer.”

Are there any concerns related to disclosing the range of an adviser's own assets? If so, please explain those concerns. Should the ranges be different than proposed? Why or why not?

> Yes, there are concerns about the privacy of an adviser's investors (i.e., investors in the adviser itself, rather than clients of the adviser), particularly when an adviser is privately held. Moreover, information regarding an adviser's own assets is not likely to be meaningful to investors. Where an adviser's own assets might be relevant is with respect to principal transactions. For example, with ADV 1A Item 1.O, the Commission should first ask: "Do you engage in principal transactions (i.e. as a counterparty to your clients)?" and only if so, ask the remainder of the questions. If the adviser engages in principal transactions, the ranges (0-1BB, 1-10BB, 10-50BB, 50BB+) are likely appropriate.

Are the proposed requirements clearly stated?

> No. Please see suggestions above.

Do advisers readily have access to the data and information requested by these proposed changes?

> Advisers should have ready access to this information with the changes suggested above.

<u>We request comment on the additional changes we propose to make to Item 5 and related sections of Schedule D.</u>

Please describe any benefits or concerns with using more precise numbers in Item 5, rather than ranges.

> While we understand the SEC's interest in gathering such data, publicly disclosing precise numbers could reveal confidential client relationships or assets of specific clients. This could lead to a substantial risk of undesirable elements (criminals, third party marketers) using these data to target a specific adviser or such adviser's clients.
>
> Thus, due to concerns with § 210(c) of the Investment Advisers Act, we object to publishing specific figures: Publishing specific figures is not necessary or appropriate for assessing potential systemic risk.

Is there any overlap among the categories of clients, and if so, among which particular categories? How could we address any overlaps?

> There may be overlaps between or among multiple categories. Two examples:

(a)-(e) or (g)-(n) with (f), i.e., almost any investment of an adviser's client in a pooled investment vehicle also managed by the adviser.

(a), (b), (d), (f)-(h), (j), or (m) with (k), e.g., acting as sub-adviser to various different entities

To avoid overlaps, if the Commission finalizes a rule where such data would be collected, the Commission should include clear rules of priority in determining which category would control if a client falls into multiple categories.

Please describe any concerns with providing information on: (a) The number of clients for whom investment advisers provide advisory services but do not have regulatory assets under management; (b) the regulatory assets under management attributable to non- U.S. clients; or (c) parallel managed accounts. Are there other types of information advisers could report that would meet our goals?

(a) With regard to specific amounts and numbers of clients, there are substantial privacy concerns. As noted above, due to § 210(c) concerns, the Commission should only publish ranges in the current bands appearing in the ADV.
(b) No concern.
(c) We do not understand the Commission's goal in collecting information on parallel accounts. There could be a variety of reasons that assets would shift between parallel managed accounts and registered investment companies or business development companies; thus, combing raw data for evidence of a supposed "conflict" would not produce meaningful results. We would request that the Commission express a reasonable justification for collecting such information before imposing any requirement (and accompanying burden) to provide it.

Would advisers readily have access to the data requested?

No. We would have to undertake a complete review of every account and sub-account to categorize each in accordance with the proposed requirements. We would also need to modify our accounting and reporting software to export the required information. As noted as the beginning of this comment, such a requirement would impose significant financial and human resource burdens.

Are the proposed requirements clearly stated?

No. In addition to the issues noted above, with regard to "trusts" being treated as "individuals", we request clarification on whether they should be divided between (a) and (b) based on the assets in the trust. Including all trusts in category (a) could dramatically skew the figures in that category.

We request comment on the proposed changes to Sections 7.A. and 7.B.(1) of Schedule D.

Would advisers readily have access to the data requested?

No.

Please describe any concerns with providing: (a) Identifying numbers; or (b) the percentage of a private fund owned by qualified clients.

We have no concerns with providing identifying numbers of auditors.

As for identifying the percentage of qualified clients, this would present an unreasonable burden and substantial risk to privacy without being necessary or appropriate to monitor systemic risk. We do not routinely collect information about "qualified clients." In most cases, investors are generally accredited investors or qualified purchasers, which characterizations generally depend upon income, net worth, or investable asset thresholds. Qualified clients include all qualified purchasers, people meeting financial thresholds between those of an accredited investor and a qualified purchaser, as well as certain personnel of an investment adviser without regard to financial thresholds.

The Commission did not clearly express its rationale for proposing to collect this data, but if the Commission's intent is to monitor systemic risk by determining to what extent an adviser or its personnel invest in a fund, the Commission should simply collect data on that, rather than all qualified clients (which, due to its broad definition, would yield little useful information because of the substantial overlap with qualified purchasers). Thus, we instead suggest deleting proposed 15 b., and to protect the privacy of investors while furthering the Commission's monitoring mission in conformity with Advisers Act § 210(c), rewriting question 14 to read "What is the approximate percentage of the private fund beneficially owned by you, your related persons, and individuals meeting the definitions in 17 C.F.R. § 275.205-3(d)(1)(iii) with regard to you or your related persons?"

While we do not have this information immediately on hand, it would be substantially less burdensome to obtain this information than to obtain information on all "qualified clients", and we believe it is more directly related to the Commission's evaluation of "systemic risk" than it would be to include all "qualified clients."

Of course, if the Commission has a different reason for requesting information about qualified clients, we would appreciate learning more about it through a continuation of this proposed rulemaking.

Are the requirements clearly stated?

The requirements are clearly stated, but the rationale for them is not. Please see clarifications suggested above.

Proposed Amendments to § 275.204–1 and § 275.204–2

We believe that the proposed amendments to § 275.204-2 would be extremely burdensome while doing little to improve investor protection, specifically, the modification of § 275.204-2(a)(16) and the addition of proposed § 275.204-2(a)(7)(iv) regarding the "performance or rate of return of any or all managed accounts or securities recommendations."

In response to the Commission's questions:

Do investment advisers currently maintain these records? If so, are there concerns with making these required records?

We maintain the records required by current law. One concern about making and retaining these additional records is that the Commission has offered no meaningful rationale for this proposed change, and provided no clarification on the meaning of "communication."

The original intent of the "ten people" rule was to capture advertising/marketing materials that were circulated to a broad audience, but this proposed change, in combination with proposed § 275.204-2(a)(7)(iv), would also capture every communication about "performance," regardless of the source. This could include:

Online-only statements or performance comparisons produced at a client's request

Any presentation of data to a single client

A telephone conversation with a client regarding the status of an account

Communications that inadvertently or indirectly refer to performance, for example, a holiday card thanking an adviser for his or her advice throughout the previous year, e.g., "Thanks for a great year."

While there is a clear rationale for the ten or more persons rule, the proposed change to "any person" is supported only by an assertion that certain Commission staff may believe that some advisers probably already maintain this information.

We do not object to the requirement to maintain records of data used to carry out performance calculations, as we do in fact already maintain this information, but the Commission's burden estimate of converting to an essentially unlimited communication retention requirement completely fails to consider the additional staff training and technical resources required to retain all documents directed to “any person,” assumes perfect compliance with the requirements, and assumes no additional expenses for data analysis and storage. For training alone, we estimate the initial burden to be two to four hours per individual who may communicate with clients regarding performance, with an equivalent amount of corresponding time for a “clerk” to conduct one-on-one training with each adviser at least in the first year of implementation (30-60 minutes per quarter, at least once annually thereafter). We do not have nationwide figures, but for an adviser with approximately 100 personnel who may interact with clients about performance, this would result in an additional burden of approximately 800 hours (400 hours for the advisers, 400 for the “clerks”). Altogether, would be the equivalent of 20 full FTE weeks of work doing nothing but training advisers on document review and retention. Again, this would be in addition to expenses and software modifications required to capture and store all the additional data, which could widely vary from adviser to adviser.

If the Commission were to implement this proposal, we suggest a minimum of 24 months to implement this component of the rule to account for the dramatically increased data storage requirements (potentially 10 times the current storage for current client communications), and increased staffing levels to support compliance retraining and internal compliance monitoring across an entire enterprise.

Are there alternate means that would be sufficient to collect performance information and client communications regarding performance?

As noted above, the “ten or more persons” rule is more than sufficient to capture information relating to performance that is likely of most potential concern. We do retain client statements and underlying data and can re-generate them upon demand. But every communication that mentions performance casts too wide a net to serve a meaningful purpose.

We recommend that the Commission clarify the scope and extent of “communications” that would need to be retained, as well as clarify the meaning of “performance” such that a “communication” must bear a reasonably substantial relationship to the performance of an account or accounts.

Are there exceptions that we should consider?

Yes.

The “ten or more persons” standard is appropriate and necessary to monitor systemic risk. “Any person” casts far too wide a net and compliance with that requirement would be extremely taxing on human, financial, and technical resources with limited benefits.

Communications that do not bear a reasonably substantial relationship to performance should be exempt from retention requirements.

There should be no absolute requirement to retain “originals” of “received” communications (e.g., holiday cards from clients). Electronic copies (provided they are reliably marked with the time received) should suffice.

The Commission should clarify that dynamic electronic client statements, e.g., a secure portal allowing a client to compare performance of a portfolio against certain benchmarks, would not be a “communication”, provided that the data underlying the statements and enabling the comparisons would be subject to retention.