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FILED ELECTRONICALLY

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

RE: File No. S7-0-9-15; Proposed Amendments to Form ADV and Investment Advisers Act Rules

Dear Secretary Murphy:

I very much appreciate the opportunity to comment on the Commission's proposed amendments to Form ADV and Investment Advisers Act Rules[1]

My comments are based upon my experience as an "out-sourced CCO" for three registered investment advisers regulated by the Commission under the Investment Advisers Act of 1940, as amended (the "40 Act"). These three advisers manage strategies focused on commercial real estate, emerging market equities and energy industry investments, respectively. In addition, I provide consulting support for other 40 Act registered investment advisers executing a variety of trading strategies.

A. Proposed Disclosure of Social Media Sites.

The Proposal describes changes to Item 1.1 of Part 1A of Form ADV that would require disclosure of the adviser's websites for social media platforms. The Proposal specifically discusses the increasing use of social media by advisers.

The proposal speaks to "advisers' websites" and presumably does not apply to individual employees' websites on social media (e.g. personal LinkedIn sites, Facebook pages, or Twitter accounts). It is clear that advisers are slowly increasing the use of social media as a component of their overall marketing strategy, and that use includes the use of firm-sponsored and individual employees' "pages" on social media sites. These pages, typically limited at this point to display of "business card information" and created by the advisers' marketing employees and/or executives are used professionally to stake out a place in the social media universe. Most firms have adopted social media policies that restrict the use of these social media sites to "business card" information only or otherwise limit the content that may be placed upon those sites to pre-approval of the Chief Compliance Officer.

[1] *Amendments to Form ADV and Investment Advisers Act Rules*, Securities and Exchange Commission Release No. IA-4091; File No. S7-09-15 (May 20, 2015) ("Proposal") *available at* http://www.sec.govv/rules/proposed/2015/ia-4091.pdf.

The question therefore is whether providing investors and the Commission with disclosure of advisers' social media sites would further the transparency and risk assessment tools available to investors and the Commission. It would be my recommendation that the Commission not require disclosure on Form ADV of firm-sponsored sites using social media and instead rely upon existing oversight of all adviser communication by the advisers' compliance departments. Existing rules promulgated by the Commission and implemented by Chief Compliance Officers typically will cover the risks associated with this type of public communication, just as they do with respect to more traditional publishing sites (i.e. print newspaper, trade magazines, etc.). To require inclusion and disclosure of social media sites used by the adviser in Form ADV will provide little added value to the investor or the Commission.

The Commission has asked whether it might be beneficial to have advisers identify the number or percentage of employees that have those accounts. My recommendation would be that the Commission refrain from requiring that information at this time. Advisers and their CCOs are continuing to evolve social media policies. A key issue is how to define "social media" and draw the line between monitoring employees' professional online presence and intrusion into personal social media use. For example, it is quite clear that the use of LinkedIn has evolved to strictly a professional use, although not always related to the employee's business (many employees simply use LinkedIn as an online resume repository to allow for recruiters and potential employers to locate them in job searches). However, because LinkedIn is mostly used for professional purposes, it has become a *de facto* part of the regular monitoring of employee communications for most advisers. On the other hand, sites like Facebook are less likely to be used for professional purposes, at least in the financial industry. Other social media sites are less clear cut. Twitter for example, seems to be used by individuals for both personal and professional purposes. I would note that a quick online search of social media sites will reveal in excess of 200 specific sites that are considered part of the "social media" universe. This list is as diverse as one can imagine, yet all of them are public and all of them require monitoring to the extent they are used for marketing and advertising. And the list is growing every day. This begs the additional question of how, as regulators, investors and compliance departments, do we define "social media". As conservative practitioners of compliance oversight, it would be natural to define social media as broadly as possible, as any site or online page has the potential to constitute "social media" – LinkedIn pages, Facebook, Twitter accounts, blogs, personal websites, and even old style chat rooms would need to be included. But what of topic specific sites that on their face have nothing to do with the financial industry? For example, an employee of an adviser may be a member of an auto club site that is designed for fans of a particular brand of automobile. On its face, use of this type of social media site would not seem to be an obvious risk requiring monitoring by compliance. However, what if an adviser employee uses that type of site to market the servicers of the adviser?

The practical result for most CCOs and I suggest for investors and the Commission is to have firms continue to adopt policies restricting use of social media sites by the firm and employees to "business card only" information, with pre-clearance for any additional posting of content (e.g. posting of articles written by the employee or the firm related to the industry, etc.). CCOs must rely on the attestations of employees with respect to compliance with these policies, together with forensic testing of public sites to monitor use by employees. However, it will be rare that advisers or their compliance departments will know all of the social media sites used by employees and be able to provide meaningful statistical data for the Commission or investors with respect to the use of these sites.

More importantly, the question is whether that data, even if available, would be useful to investors. I do not suspect that the type of communication existing on social media sites would allow investors to get a more complete understanding of the business of the adviser separate and distinct from other information available on the adviser's firm sponsored website, Form ADV and other more traditional communications. To ask advisers to disclose all possible social media sites would seem to be burdensome and not adding meaningfully to the goal of promoting transparency and better risk assessment tools for investors. Thus the benefits to be gained by the Commission and investors do not seem to outweigh the burden of reporting and the potential inability to provide meaningful and accurate data on the use of social media sites by employees.

B. Proposed Changes re Chief Compliance Officer Business Activity.

The Proposal includes changes to Item 1.J of Form ADV requiring an adviser to report whether its chief compliance officer is compensated or employed by any person other than the adviser (or a related person of the adviser) for providing chief compliance officer services, and, if so, to report the name and IRS Employer Identification Number (if any) of that other person. The Commission notes the wide spectrum of both quality and effectiveness of outsourced chief compliance officers and firms and sees the information as enabling the Commission to identify all advisers relying on a particular service provider and could be used to improve the Commission's ability to assess potential risks.

I believe that this data, while potentially relevant, may improperly assume risk to investors with advisers using outsourced Chief Compliance Officers while not properly gathering more relevant data. It is my experience that the depth and breadth of experience of Chief Compliance Officers in the industry is in fact quite disparate. However, this disparity exists regardless of whether the CCO function is outsourced or assigned to a full-time compliance professional.

The Proposal raises an issue that is critical for the integrity of the Compliance function within the registered investment adviser industry. That is how to properly design and staff a compliance operation within a firm that will effectively manage the risks that are specific to each adviser? The CCO position is only one part of that structure and an assessment of the other business activities of the CCO (both outside and within the firm) are a critical part of that assessment. However, that should not be the only factor in determining whether the compliance function is structured and staffed effectively. By focusing on the outsourced CCO function, I believe that the Commission may be asking the wrong question.

For example, it is not uncommon for small to mid-sized advisers to name a member of senior management as CCO. This situation, while not involving any outsourced resource, is fraught with conflict and poses more risk to investors than any outsourced or part-time CCO solution. In some cases, these CCOs have retained outsourced compliance consultants to assist with the day to day administration of compliance duties. These consulting engagements at a minimum typically involve monthly or quarterly review of email, gathering of required attestations, assistance with compliance policy development, assisting with annual training requirements, and periodic internal audit and review and other services. Some of these consulting structures and the firms that provide them are quite

effective. Others provide a very superficial support. The key problem, however, is really whether in any case a CCO who is also responsible for setting investment strategy and/or executing trades, as well as overall management of the firm, can ever by effective enough as an independent monitor of firm compliance issues. The use of an independent outsourced CCO solves those conflicts and ameliorates risk to investors much more effectively.

I would also note that outsourced CCOs, while typically engaged as part-time employees on the payroll of the adviser, may also be engaged as independent contractors. It is my experience that the form of engagement (whether on the payroll or engaged as an independent consultant) is not dispositive of the risk. The qualitative ability of the individual and the appropriateness of the time commitment assigned to the function is much more relevant to the issue of whether the structure and staffing of the compliance function is appropriate.

The more relevant question is whether the adviser has committed sufficient resources (time and expertise) to the compliance function relative to the adviser's specific business. A private equity firm with eight employees investing in a dozen portfolio companies a year and having AUM of $1B has a very different compliance need than a 50 person adviser investing in global equities on a daily basis for 6 funds and having total AUM of $15B. In both cases, the CCO and supporting staff, together with outside consultants, must be structured appropriately to manage risk and perform the required compliance function consistent with best practices. Those respective compliance departments will be structured very differently, with the issue of whether the CCO is outsourced a secondary consideration.

So the question becomes how can the Commission develop a more objective set of criteria that will assist both the Commission and investors in determining whether the Compliance Department of a firm is structured and staffed appropriately for the firm, considering the size (both AUM and numbers of employees), strategy, physical location(s) and other factors impacting staffing needs?

I would recommend that the Commission modify the Proposal to require disclosure of the following data related to an adviser's structure and staffing of the compliance function:

1. CCO education and professional designations: legal degree, financial certification (CPA, CFA, etc.), securities licensure (Series 7, 63, 79, etc.), and other technical training information. This information will allow the Commission and investors to understand the education and experience of the CCO at least with respect to technical licensure/training.
2. List of other employees/consultants engaged in the compliance function, including the same disclosures with respect to technical training.
3. Disclosure of total man-hours devoted to the compliance function. This can be gathered either in the form of FTEs (Full Time Equivalents) devoted to compliance, percentage of time on a weekly/monthly/yearly basis, or some other objective measure of the raw man hours dedicated to the compliance function at the firm. This would provide much more relevant data that simply flagging whether a CCO is full or part time.
4. Other duties of the CCO (both outside business activities and internal responsibilities). The breadth of other responsibilities of the CCO is an important consideration, but that should include both external sources of demand on the CCOs time (other CCO positions and other businesses) as well as internal demands (General Counsel duties, portfolio management) etc.

Once this data is gathered, it should be relevant to the due diligence by investors and the examination by the Commission of advisers as each assess the appropriateness of an adviser's compliance function. Of course this is itself just one set of data points. The ultimate measure is whether in fact the Commission and/or any investor due diligence can determine the effectiveness of the adviser in performing its required compliance functions. There will still be well staffed and managed compliance departments that perform poorly and relatively understaffed and poorly structured departments that perform very well, usually due to the quality and commitment of the individuals assigned to the task. But by having the data on overall structure of the compliance department, the Commission may be able to more appropriately identify reasons for underperformance and require remedial action on the part of the adviser in the form of increases in staff, budget and/or quality of the compliance personnel involved.

C. Comments regarding Umbrella Registrations

The Proposal also describes changes designed to provide advisers with a mechanism for registering multiple related entities under an "umbrella registration" process. The understanding is that these amendments are designed to codify the Commission's current guidance with respect to "relying advisers" [2]

Under the Proposal, umbrella registration would be available where a filing adviser and one or more relying advisers conduct a single private fund advisory business and each relying adviser is controlled by or under common control with the filing adviser. As proposed, umbrella registration would only be available in the scenario of a private fund adviser operating as a single business through multiple legal entities.

The conditions, which are indicia of a single advisory business, include the following:

> 1. The filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients (as defined in rule 205-3 under the Advisers Act) and are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds;
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> 2. The filing adviser has its principal office and place of business in the United States and therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the filing adviser's and each relying adviser's dealings with each of its clients, regardless of whether any client or the filing adviser or relying adviser providing the advice is a United States person;

[2] See 2012 ABA Letter. The Division of Investment Management previously provided no-action relief to enable a special purpose vehicle ("SPV") that acts as a private fund's general partner or managing member to essentially rely upon its parent adviser's registration with the Commission rather than separately register. See American Bar Association Subcommittee on Private Investment Entities, SEC Staff Letter (Dec. 8, 2005), Question G1, available at http://www.sec.gov/divisions/investment/noaction/aba120805.htm (the "2005 ABA Letter").

3. Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are "persons associated with" the filing adviser;

4. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the Commission; and

5. The filing adviser and each relying adviser operate under a single code of ethics adopted in accordance with Rule 204A-1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with Rule 206(4)-(7) accordance with that Rule.

While providing for umbrella registration for advisers is important and will in fact reduce the administrative burden for advisers and provide the Commission with a better picture as to an adviser's complete business structure and risk profile, several aspects of the Proposal are cause for concern:

1. Protection of the Corporate Entity Structure. Among the reasons advisers have established related entities to provide advisory services to clients is to limit liability exposure to the specific entities and the investors in those entities. For example, private equity advisers and commercial real estate advisers will typically create related entities to provide advisory services to a portfolio company or commercial real estate property, not only to isolate fees and expenses and allocate profits of those investments properly, but also to isolate investors not allocated to the particular portfolio company or property from liability of the activity of those investments. We are concerned that the language of the Proposal and the proposed rule will make it easier for the plaintiffs bar to "pierce the corporate veil" and avoid the very important segregation of corporate assets and liabilities typically created by these structures. While these entities are indeed ultimately controlled by common owners/management, we believe it is important that any test for whether a particular organization can avail itself of the umbrella registration not include language indicating that the entities are "operating as a single business". We believe that the Commission can get to the same result by adopting a standard that merely confirms the common ownership and management of the organization. This would help preserve the integrity of the individual corporate structures while at the same time providing the Commission with the data it requires on the compressive structure of the adviser organization.

2. The current Proposal contemplates providing the umbrella registration option only to advisers to private funds and Separately Managed Accounts having Qualified Clients. This requirement seems overly restrictive and does not enhance the goal of providing transparency into advisers' organizations for any number of additional circumstances. For example, a firm that manages a number of separately managed accounts that include Accredited Investors, but not Qualified Clients, should be able to avail itself of the umbrella registration. To not include these organizations would do nothing to advance the transparency sought by both the Commission and investors in the registration process. The goal of providing the Commission and

investors with a single view into the overall structure and organization of an adviser's business is not promoted by limiting any umbrella registration option by investment vehicle or classifications of investors.

3. The current Proposal includes a new definition of "Relying Adviser" to mean: "An investment adviser eligible to register with the SEC that relies on a filing adviser to file (and amend) a single umbrella registration on its behalf." Early comments to the rule, and our own reading of this definition, lead to the conclusion that the Commission will require that any individual Relying Adviser would have to be eligible to file with the SEC on its own in order to take advantage of the umbrella registration process. This eligibility would seem to include minimum AUM requirements for the relying adviser. We suggest that this definition be modified to specifically exclude from the analysis any independent AUM requirement. We believe that the goals of transparency and clarity of organization for the Commission are not enhanced by *de facto* relying advisers who, solely because of a lack of threshold AUM, must file with a state regulator while the rest of the organization is regulated by the Commission. In many cases, advisers have established independent entity structures to handle particular strategies or portfolios and, while related to the primary strategy, may or may not independently meet the AUM threshold for independent registration with the Commission. We believe this requirement to be counter to the best interests of the Commission and investors in reviewing an adviser's business. We also believe this creates an undue burden on smaller advisers, who, while meeting the primary threshold for registration with the SEC, must maintain a separate regulatory regime as a result of AUM allocation to particular structures.

Conclusion:

I sincerely appreciate this opportunity to comment on the Proposal and support the Commission's ongoing efforts to improve Form ADV, provide more transparency and enable better risk assessment by the Commission and investors with respect to advisers and their operations.

Accordingly, I urge the Commission to consider modifications to the Proposal consistent with these comments.

Sincerely,

Thomas K. Morgan
Managing Member