July 2, 2015

VIA EMAIL

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Comments on Release No. IA-4091; File No. S7-09-15

I appreciate this opportunity to comment on the SEC's proposal concerning Amendments to Form ADV and Investment Advisers Act Rules (the "Proposal") described in the above-referenced release (the "Proposing Release"). I offer my comments on the Proposal both from my personal perspective as a long-time user of investment advisory services, as well as from my professional perspective as an investment management attorney with over 25 years of experience assisting adviser and fund clients in meeting SEC regulatory requirements, including those implicated in the Proposal. Please note, however, that the comments I offer are my own and do not necessarily reflect the views of any of my clients.

The first part of my letter addresses General Comments about Form ADV and related rules. The second part addresses Specific Comments stemming from particular items included in the Proposal.

GENERAL COMMENTS

While I conceptually support the effort to improve adviser reporting and disclosure, the Commission should recognize and avoid the regulatory overload being experienced by advisers – particularly smaller advisers – resulting from seemingly non-stop form and rule amendments and burdensome delivery requirements for lengthy documents that few clients actually read. To that end, the currently proposed amendments should be deferred, until more meaningful and comprehensive amendments to Form ADV and related rules are undertaken.

In my view, this would take redesigning Form ADV and the related delivery requirements with the aim of enhancing the prospect for effective communication with advisory clients and efficient delivery of disclosure. For specific suggestions along those lines, I would repeat comments I have made on past proposals, summarized in the following bullet points. To avoid reiterating pages of supporting rationale, I have simply cited to my prior comment letters for details:

- The Commission should "tear up Form ADV from its roots" and start over, taking a fresh look at what information is necessary to optimize client disclosure and regulatory oversight of advisers. See my comment letter on Amendments to Form ADV (File No. S7-10-00), dated May 20, 2008 (2008 Comment Letter),[1] page 1 and pages 17-19.
- The Commission should avoid redundancies and inconsistencies between Parts 1 and 2 of Form ADV. 2008 Comment Letter, pages 5-7.
- The Commission should adopt an electronic "access equals delivery" model for delivering Form ADV. 2008 Comment Letter, pages 1-4.
- To the extent that a full "access equals delivery" model is not adopted, the Commission should allow advisers to deliver to clients a short-form "Summary Brochure" instead of Part 2 of Form ADV, using an approach similar to the Summary Prospectus used by investment companies for prospectus deliveries. 2008 Comment Letter, page 2, footnote 4.

[1] My comment letter on Amendments to Form ADV (File No. S7-10-00) (2008 Comment Letter) can be accessed here: http://www.sec.gov/comments/s7-10-00/s71000-93.pdf.

SPECIFIC COMMENTS

In addition to my General Comments outlined above, I offer the following comments on specific aspects of the Proposal:

1. Eliminate Duplicative / Extraneous Information Aimed at "Outsourced" CCOs.

   Proposed amended Form ADV, Part 1A, Item 1.J.(2) would require an adviser to report whether its chief compliance officer (CCO) is compensated or employed by any person other than the adviser (or a related person of the adviser) for providing CCO services, and, if so, would require the adviser to report the name and IRS Employer Identification Number (if any) of that other person. The Proposing Release suggests that this information is necessary because the exam staff has observed a wide spectrum of both quality and effectiveness of outsourced CCOs and firms and that identifying information for these third-party service providers, like others on Form ADV, would allow the staff to identify all advisers relying on a particular service provider and could be used to improve its ability to assess potential risks.

   In my view, this extraneous CCO information should be eliminated from the final Form ADV amendments for a variety of reasons. The Proposal seems to assume that "outsourced" CCOs are all compensated or employed by a third-party entity – such as a compliance firm – which ignores the complications that arise under this item when an "outsourced" CCO is engaged under other arrangements, for example, as an independent contractor to more than one adviser. In that case, the proposed item poses the following problems:

   - It is unclear what information is required to be disclosed. For an "outsourced" CCO employed by an unaffiliated third-party firm (like a compliance consulting firm), this proposed item seems to be calling for the name and EIN of the unaffiliated third-party employer. However, it is not clear what should be disclosed for outsourced CCOs who act as independent contractors to their clients. If independent contractor CCOs serve only one adviser, they do not appear to have to disclose anything for this item, as they are ostensibly not "employed" or "compensated" by any other person for CCO services. This is despite the fact that they might be considered "outsourced," and may pose some or many of the risks other "outsourced" CCOs pose that account for the wide spectrum of quality and effectiveness in CCOs observed by the staff (whether that be officing off-site, dividing their time with other matters and responsibilities, or whatever). By the same token, if an outsourced CCO serves as an independent contractor CCO to a number of advisers, this item could be read to require disclosure of every other adviser paying the CCO for CCO services, raising the problems discussed below.

   - The information requested is duplicative of information already reported to the Commission. To the extent the exam staff wants to know if a particular adviser CCO serves as the CCO to any other registered advisers, that information would already be reported in the Commission filings of those other registered advisers. In other words, it the exam staff detected a problem with a particular CCO, they could merely query already existing Commission data to determine if any other registered advisers were relying on that CCO. Indeed, in the event of a problem with a particular CCO, the staff could simply get that information from the CCO directly, assuming appropriate due process.

   - The information requested may well be difficult to gather and may raise privacy/confidentiality issues with an outsourced CCO's other clients. As mentioned, in the case of an outsourced CCO who acts as an independent contractor to the adviser, this item could be read as requiring the adviser to report information (names and EINs) of all the other adviser clients who are paying the CCO to serve as CCO. This information is not in the records or under the control of the adviser, but rather would have to come from the CCO, as a third-party service provider. This seems akin to

asking an adviser's auditor to provide the adviser with the names and EINs of all the auditor's other clients, so it can be reported on Form ADV. Indeed, to the extent the CCO's other clients are not SEC-registered or reporting entities, they may well have privacy/confidentiality rights that could be violated if the CCO reveals their names to another client, especially for the purpose of reporting on a form made public through the SEC.

- The information is likely to become inaccurate or out-of-date quickly and routinely. Outsourced CCOs – specifically those who function as independent contractors to a number of clients -- may well have frequent changes to their list of compliance clients, as former engagements are ended and new engagements are taken up in the normal course of business. However, because this CCO information is proposed to appear in Item 1.J. of Part 1A of Form ADV, it would have to be amended "promptly" if it became "inaccurate in any way." (See General Instruction 4 to Form ADV.) If client list changes did occur, would the independent contractor CCO then have to circle back to all its registered adviser clients, inform them of the change, and then have all those advisers amend their ADVs to reflect that change? This would be overly burdensome and should be entirely unnecessary to meet the purported disclosure goals.

- The requested information entirely misses advisers relying on a third-party compliance provider without naming an "outsourced" CCO. To the extent the disclosure proposed in this item is intended to help the exam staff identify all the advisers relying on particular compliance provider, the item once again misses the mark. Many advisers rely on outside compliance providers but yet choose to name an in-house individual as CCO. In that case, there would be no information provided in Item 1.J. that would alert the staff to the fact that an adviser might be at risk due to reliance on a particular outside provider because the adviser would merely name its in-house CCO in Item 1.J.(1), without reference to the outside provider in Item 1.J.(2).

As noted, proposed Item 1.J.(2) seems to assume certain arrangements underpinning an "outsourced" CCO relationship that don't apply to "outsourced" CCOs operating under other arrangements, and would cause undue burden and unnecessary complications in those other arrangements. Moreover, the information proposed to be requested does not help to distinguish an at-risk "outsourced" CCO from any other CCO, including in-house CCOs, who may pose similar risks as outsourced CCOs or who may be supported by outside providers not required to be named in the proposed item.

Instead of adding burdensome and problematic disclosures to ADV aimed at "outsourced" CCOs, it would be better if the reasons for the wide spectrum of CCO quality and effectiveness observed by the exam staff were discerned with more precision, so at-risk CCO arrangements could be identified whether they were "outsourced" arrangements or not. In other words, are outsourced CCOs less effective because they do not office at the adviser daily? Is it because they are dividing their time with other matters or responsibilities? Is it because they do not understand or have experience in the compliance arena? Of course, all of these factors may apply to an in-house CCO too. Or, is an in-house CCO supported by outside compliance providers that the exam staff believes raise potential risks? This last scenario, as explained above, would not be reflected anywhere on Form ADV, either now or as proposed to be amended.

Given the nature and variety of circumstances that might raise risks, these types of matters are best fleshed out in the context of an actual exam, through document request lists and dialog, rather than with blunt-edge, off-the-mark disclosure items on Form ADV. For all these reasons, the "outsourced" CCO information proposed to be added in Item 1.J.(2) of Part 1A should be eliminated.

2. Defer the proposed books and records amendments, which will exacerbate already existing confusion and burden relating to adviser advertising and similar communications.

You may view the proposed books and records rule amendments as merely minor, incremental changes aimed at enhancing the information available to the staff in examining and evaluating adviser performance claims. From an adviser's perspective, however, the amendments may well be viewed as simply exacerbating already existing confusion in this area and not worth the inevitable compliance costs that will ensue. Indeed for advisers, especially smaller advisers, the amendments may present just another opportunity to be tripped up by overly complex, ever-changing rules.

The Proposing Release notes the staff's belief that most advisers already keep the proposed information anyway, suggesting that the proposed rule amendments are unnecessary to achieve the purported regulatory goals. Moreover, no matter how minor the amendments may seem, they will, once adopted, require all advisers to review – and in many cases amend -- their books and records procedures to comport with the wording changes made in the applicable rules and update their actual practices to the extent necessary to conform. More paperwork, more time, more involvement from outside counsel/consultants and more training will be inevitable, regardless of whether an adviser is or is not already keeping the proposed records and therefore whether the amendments would actually make examinations easier for the staff.

The rules governing adviser advertisements and similar communications are a perfect example of the numerous overly complex rules that currently apply to advisers. Following is just a sample of the inexplicably confusing provisions advisers have to sort through:

- Rule 206(4)-1 prohibits testimonials and other aspects of adviser ads, defining an "ad" in substance as any writing addressed to more than one person (i.e., 2 or more people).

- Rule 204-2(a)(7) (as proposed to be amended) would require advisers to keep all communications relating to the performance or rate of return of any or all managed accounts or securities recommendations no matter how many people they are sent to, PROVIDED THAT, that if the adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 (i.e., 11 or more) people, the adviser does not need to keep a record of the names and addresses of the persons to whom it was sent, except that if the notice, circular or advertisement is distributed to people named on any list, then the adviser has to retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

- Rule 204-2(a)(11) requires advisers to keep copies of all ads and other communications circulated or distributed to 10 or more people.

- Rule 204-2(a)(16) (as proposed to be amended) would, in substance, require advisers to keep records necessary to back up performance information in ads and other communications circulated or distributed to any person.

This web of rules is just from the standpoint of the Investment Advisers Act. Of course, the complexity magnifies if the advertisement involves a fund under the Investment Company Act or a broker-dealer subject to FINRA rules.

Given this, it is no wonder advisers find it difficult -- if not impossible -- to discern whether any particular written material is an "advertisement" or other communication subject to the rules, and, if so, subject to which rules, and to which requirements for retaining a copy or retaining back-up information or memos relating to the material.

It is particularly questionable for the Proposal to put forward seemingly minor, incremental amendments to the adviser books and records rules when the entire adviser books and records regime is so drastically out-of-date and in need of complete overhaul. In light of this, and in keeping with the point made under my General Comments above, the proposed books and records amendments should be deferred until more comprehensive and meaningful amendments are undertaken in this area.

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If you have any questions about my comments, or would like any further clarification about these or related points, please contact me at the phone number referenced below.

Sincerely,

L. A. Schnase
Individual Investor and Attorney at Law
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