nea Member Benefits

NEA Member Benefits is a
wholly owned subsidiary of the
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VIA EMAIL -rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Investment Adviser Act Release No. 3110 (File Number S7-36-10) — Rules Implementing Amendments to the Investment Advisers Act of 1940

Dear Ms. Murphy:

Thank you for the opportunity to comment on Investment Advisers Act Release No. IA-3110, regarding proposed Rules Implementing Amendments to the Investment Advisers Act of 1940. Our comments address Proposed Rule 203A-2(e) under the Investment Advisers Act of 1940, as amended, and proposed amendments to Items 6 and 7 of Part I of Form ADV. These comments are made on behalf of NEA Member Benefits Corporation ("NEA Member Benefits").

I. Background

NEA Member Benefits is a wholly-owned, for-profit subsidiary of the National Education Association ("NEA"), the nation's largest professional employee organization, representing 3.2 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators and students preparing to become teachers.

Although NEA Member Benefits does not manage any client assets, it contracts with a third-party to operate the NEA Valuebuilder Program (the "Program"), which provides investment products in connection with retirement plans sponsored by school districts and other employers of NEA members and individual retirement accounts established by NEA members. As part of the Program, NEA Member Benefits monitors the performance of the investment products offered through the Program and provides monthly reports to NEA members regarding the best- and worst-performing products. NEA Member Benefits is compensated by the third-party for the participation of NEA members in the Program.

Because of the advice it provides to NEA members located throughout the United States, NEA Member Benefits is permitted to register with the U.S. Securities and Exchange Commission ("SEC") as an investment adviser pursuant to Rule 203A-2(e) (the multi-state adviser exemption) and is currently registered as such.

II. Comments Regarding Proposed Rule 203A-2(e)

A. 15-State Threshold

You requested comments as to whether the 15-state threshold for mid-sized advisers to register with the SEC as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") should also be applied to small advisers, i.e., advisers with assets under management of less than $30 million. We strongly recommend that the 15-state threshold be applied to both small and mid-sized advisers. As an investment adviser that provides advice to persons in each of the 50 states and the District of Columbia, we are sensitive to the time, expense, and human resources required to maintain compliance with the securities laws in multiple jurisdictions.

The policy considerations embodied in the Dodd-Frank Act with respect to mid-sized advisers apply equally to smaller advisers. Moreover, the costs of complying with various state securities regulations are even more burdensome on smaller advisers, which are likely to have fewer resources and smaller compliance staffs on which they can rely for help. It is likely that NEA Member Benefits would be unable to continue to provide the services described above to its members if it were required to register in all 50 states and the District of Columbia. The cost of the additional personnel and other resources necessary to maintain multiple state registrations, respond to inquires from multiple state securities commissions and monitor state regulatory developments would render the Program infeasible, thus depriving our members of a valuable financial planning resource.

B. Registration Cushion

You also requested comments with respect to whether, in conjunction with the proposed change to a 15-state threshold for small and medium-sized advisers, the SEC should eliminate the "cushion" that permits advisers to remain registered with the SEC even if they are no longer registered in five of the states in which they were initially registered. We recommend that the cushion be eliminated with the implementation of a 15-state threshold.

A cushion protecting SEC-registered advisers from reverting to state registration would result, as it does now, in inequitable treatment of similarly situated advisers. Presently, an investment adviser that currently is required to register in 28 states may nonetheless be registered with the SEC because at some point in the past it was required to register with 30 or more states. At the same time, an investment adviser that is required to register with only 28 states is prohibited from registering with the SEC. Both advisers face the same expenses of registering with multiple states, but only one, based solely on past operations, is permitted to register with the SEC. In addition, the investment operations of both advisers have the same impact on the national markets and should be treated similarly.

Additionally, advisers, rather than the SEC, are in a better position to judge the likelihood that the number of states with which they are required to register will change and consequently, the risk that they bear in losing their eligibility for SEC-registration. In other words, because the multi-state exemption is permissive rather than mandatory, each adviser has the option of waiting until it would need to register with more than 15 states before it registers with the SEC—thereby establishing a self-created cushion.

Alternatively, rather than eliminating the cushion entirely, the SEC may elect to amend Rule 203A-2 to provide for a time period during which an adviser may take advantage of the cushion. For example, an investment adviser may continue to rely on the exemption for two years following the end of the fiscal year in which it is not longer required to register in 30 states. As the end of the two-year period, the investment adviser would need to withdrawal from SEC registration and register with the appropriate states if it is still required to register in fewer than 30 states.

> *For the above reasons, we support applying the 15-state threshold for the multi-state adviser exemption in Rule 203A-2(e) to both mid-sized and small advisers. We also support, with the application of a 15-state threshold to mid-sized and small advisers, eliminating the cushion in the number of states needed to qualify for SEC registration or, in the alternative, place a limit on the number of years an adviser may rely on the cushion.*

III. Comments on Proposed Amendments to Items 6 and 7 of Part I of Form ADV

You requested comments on proposed changes to Items 6 and 7 of Part I of Form ADV. With respect to these Items, we recommend that the Form exclude in-house counsel and lawyers who are not actively engaged in the practice of law (e.g., business persons who happen to be lawyers) from the requirement that firms disclose lawyers or law firms that are "related persons."

A. Disclosures of Related Persons Who Are Lawyers

Item 7(A) and Item 6 as proposed require disclosure of any related person (or, as proposed, business activity) that is a lawyer or law-firm. We recommend that the Form clarify that the adviser need not indicate that a lawyer is a related person if that lawyer is (i) in-house counsel or (i) a lawyer not actively engaged in the practice of law.

Because in-house counsel provides legal advice only to the advisory firm and not to clients or other third-parties, it could be confusing for clients to see that an adviser has a related person who is a lawyer, when that lawyer is not available to create an attorney-client relationship with that client. Additionally, similar confusion could result from reporting that the adviser has a related person who is a lawyer if that lawyer is not engaged in the practice of law. For example, many advisers employ compliance officers or other personnel who are lawyers by training or may have previously engaged in the practice of law, but who not longer serve in such a capacity. Disclosing the adviser's relationship with such a person does not further any interests of the SEC, clients, or the public, and on the contrary, could create unnecessary confusion.

> *For the above reasons, we recommend that Items 6 and 7 of Form ADV clarify that in-house counsel and non-practicing lawyers be excluded from reporting with respect to related persons.*

We very much appreciate the opportunity to submit comments on the proposed rule and Form amendments. If the SEC or its staff wishes to discuss the matters mentioned in this letter, please contact me, Lisa M. Sotir, at 301-527-4440.

Very truly yours,

Lisa M. Sotir, Esq.*
General Counsel
NEA Member Benefits Corporation

*Admitted NY and DC

cc: Gary Phoebus, President & CEO, NEA's Member Benefits Corporation
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