INVESTMENT ADVISER
ASSOCIATION

January 24, 2011

Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Rules Implementing Amendments to the Investment Advisers Act of 1940; Proposed Rules, Rel. No. IA-3110; File No. S7-36-10

Dear Ms. Murphy:

The Investment Adviser Association (IAA)[1] appreciates the opportunity to comment on the SEC's proposed new rules and rule amendments under the Investment Advisers Act of 1940 (the Advisers Act) to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (collectively, the Proposal).[2] Among other things, the Proposal increases the statutory threshold for investment adviser registration with the SEC, requires certain advisers to private funds to register with the SEC, and requires reporting by other advisers that are exempt from SEC registration. The Proposal also includes rule amendments that address a number of other changes to the Advisers Act made by the Dodd-Frank Act.

This comment letter[3] addresses the proposed amendments to Form ADV, Part 1, including regulatory assets under management (AUM), as well as private fund

[1] The IAA is a not-for-profit association that exclusively represents the interests of investment adviser firms registered with the SEC. Founded in 1937, the Association's membership consists of more than 500 firms that collectively manage in excess of $10 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

[2] *Rules Implementing Amendments to the Investment Advisers Act of 1940; Proposed Rules*, Rel. No. IA-3110; File No. S7-36-10 (Dec. 10, 2010), available at http://www.sec.gov/rules/proposed/2010/ia-3110fr.pdf .

[3] We address the proposed amendments to the pay to play rule in a separate letter.

information, data about an adviser's business, and additional information about advisers' non-advisory activities and their financial industry affiliations.

Introduction and Summary

The Dodd-Frank Act provides the Commission with increased responsibility for oversight of private funds. The Commission is proposing amendments to Part 1 of Form ADV in order to enable it to better focus its examination and enforcement resources, particularly with respect to the collection of information about private funds, and to enhance its oversight of investment advisers. The IAA fully supports the Commission's goals.

The Commission has not made substantial revisions to the information collected in Part 1 of Form ADV since 2000, when the Investment Adviser Registration Depository (IARD), the electronic filing system for investment advisers, was established, and IARD filing for Part 1 was implemented.[4] We applaud the Commission for taking steps to improve the collection of information from advisers in order to improve its risk assessment process and investment adviser examination program. We are concerned, however, with certain aspects of the proposed revisions and suggest a number of modifications to the Proposal.

Specifically, we encourage the Commission to: (1) not subject private fund information submitted by advisers on Part 1 of Form ADV to public disclosure on the Investment Adviser Public Disclosure web site (IAPD); and (2) streamline the information it collects from advisers. These general recommendations regarding the Proposal are set forth below. In addition, we have set forth our specific item-by-item comments with respect to Part 1 in the attached Appendix.

1. The Commission Should Not Subject Private Fund Information Submitted by Advisers on Part 1 of Form ADV to Public Disclosure on the IAPD

Enhanced disclosure in Part 1 of Form ADV will improve the Commission's ability to gather data about firms and to conduct appropriate inquiries, inspections, and other activities based on that data. We support this increased oversight of private funds and increased information gathering. Certain additional information will allow the Commission to focus its examination and enforcement resources on those advisers to private funds that appear to present greater compliance risks. In addition, increased oversight of private funds will enable the Commission to improve its ability to assess conflicts and potential risks, and to identify funds with service provider arrangements that raise a "red flag."

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[4] *Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV,* Rel. Nos. IA-1862, 34-42620 (Apr. 5, 2000).

We submit, however, that the Commission should limit the public availability of private fund information provided on Part 1 of Form ADV. First, certain of the proposed disclosure regarding private funds could expose internal, sensitive, and/or confidential information if it becomes publicly available. Beneficial ownership information, for example, could be used by competitors to ascertain information about a fund's seed capital. In addition, beneficial ownership information, along with other identifying information provided in the Form, could be used by another firm to identify investors in a fund. It also could be used to track an investor's market movements, thereby exposing or potentially compromising an adviser's investment decision-making process, to the detriment of the investor. Treating the private fund information as confidential will enable the Commission to collect the information it deems necessary while protecting the proprietary nature of the information. Furthermore, keeping the information confidential will not harm current investors due to the fact that they are already provided with meaningful disclosure in Part 2 of Form ADV, the offering documents, and through due diligence efforts.

Second, the disclosure will unduly focus the attention of a firm's non-fund adviser clients on what may be just one aspect of a firm's business. For example, private funds may constitute less than 10% of an adviser's business, but could be 90% of the adviser's Part 1 disclosure. This could give investors a distorted view of an adviser's business. In addition, the volume of public disclosure will highlight private funds that are not publicly available, and that are only available to sophisticated investors. The disclosure draws attention to information that is not relevant or appropriate for most clients.

Third, the public nature of this disclosure may lead to confusion as to what constitutes a public offering of a private fund. Advisers will be required to provide very specific information regarding private funds. As a result, it is not difficult to envision a scenario in which an adviser's current clients or other members of the public not eligible to invest in the funds would approach an adviser about potential investment opportunities in private funds. Keeping the disclosure confidential will address this concern. At a minimum, the Commission should confirm that providing the requested disclosure will not constitute a public offering within the meaning of the private placement exemption (as provided in Form D).

Because of these concerns, the Commission should take steps to treat as confidential the private fund information submitted on the IARD, similar to the treatment currently afforded to social security numbers and certain personal, identifying information regarding sole proprietors. In addition, or as an alternative, the Commission could allow advisers to provide the very detailed private fund information non-publicly to the Commission in a searchable format instead of via the IARD system.[5] Allowing

[5] The Commission has scheduled an open meeting on January 25, 2011 to consider proposing additional reporting requirements for advisers to private funds to implement the requirements of Sections 404 and 406 of the Dodd-Frank Act. It is possible that the private fund information that the Commission has proposed to include in Part 1 of Form ADV could instead be reported in conjunction with the systemic risk and other

advisers to provide the requested information apart from the IARD would address the confidentiality issues as well as the regulatory burden issues outlined below, while still providing the Commission with the information it seeks. We would be glad to meet with the staff to further discuss these issues.

2. The Commission Should Further Streamline the Information It Collects From Advisers

We agree that the information collected from Form ADV is of critical importance to the Commission's regulatory program. We support the gathering of appropriate information in order to help the Commission assess risk and allocate its examination resources accordingly. A balance must be struck, however, between the value of the additional information to the Commission and the regulatory burden to advisers.

The information the Commission proposes to collect has significantly expanded in detail and scope. Advisers would be required to answer twenty pages of questions in Part 1. The number of pages of questions in Schedule D has more than doubled from six pages to thirteen pages. Much of the information is sought on a fund basis so that the disclosure burden is even more significant for firms with multiple private funds. Taken as a whole, the disclosure currently proposed will result in a detailed, lengthy document that will be time consuming and require substantial resources to complete.

Given the volume of information requested, the process of submitting the data on the IARD will also be time consuming. Advisers will be required to manually keystroke data into the IARD system. The combined burden of collecting, reviewing, coordinating with affiliates or other entities, managing the information and responding to the disclosure requirements is already substantial for Part 1 and will be even more significant under the Proposal. Accordingly, we do not agree that the new requirements "should impose few additional regulatory burdens."[6] The overall regulatory burden is even more substantial when the disclosure obligations imposed by the recently revised Part 2A and Part 2B of Form ADV are also taken into consideration, as well as other recently adopted regulations.

In order to address these issues, the Commission could eliminate questions that ask for information that is not of high value to the SEC's oversight program. For example, information regarding regulatory AUM attributable to each type of client, the summary of private fund investments by asset and liability class categorized in fair value hierarchy, and beneficial ownership information will be extremely difficult for advisers to capture and report, but will be of limited utility to the Commission. In the Appendix we

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reporting imposed by Sections 404 and 406. We would be glad to discuss this alternative with the staff once we have had the opportunity to review any additional reporting requirements proposed on January 25.

[6] Proposal at 48.

discuss our concerns regarding these reporting requirements and suggest a number of additional ways to streamline the disclosure requested.[7]

The Commission could also facilitate the collection of information by providing advisers with additional time to respond to certain items, such as those items requiring financial information. As currently drafted, advisers with audited private funds would be required to respond to the questions in Part 1 using unaudited financial information, which would not necessarily be in sync with other financial statements or disclosure documents. As an alternative, the Commission could allow those advisers additional time to report audited financial information. For example, advisers with audited funds could provide financial information requested in Part 1 of Form ADV 30 days after financial statements are distributed, or 150 days after the fiscal year end. This would provide more meaningful information to the Commission.

At a minimum, the Commission should provide advisers with additional time to implement the disclosure requirements that are not related to the registration threshold. Additional time is needed due to the fact that some advisers would need to create new systems to collect information to respond to certain proposed disclosure requirements.

Conclusion

We commend the Commission for issuing this important proposal and we urge the Commission to modify the Proposal as suggested herein. We would appreciate the opportunity to meet with the Commission to discuss our comments. In the meantime, please do not hesitate to contact us if we may provide additional information or clarification regarding these matters.

Respectfully submitted,

/s/ Valerie M. Baruch

Valerie M. Baruch
Associate General Counsel

Cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Jennifer McHugh, Acting Director
Division of Investment Management

[7] Of course, the Commission can seek more detailed information from advisers at any time.

Appendix
Specific Form ADV Comments

General Instructions

- Accelerated Filing Deadlines: The Proposal requires advisers to amend Form ADV each year by filing an annual updating amendment within 90 days after the end of the adviser's fiscal year. The Commission requests comment regarding whether the filing deadlines should be accelerated so that advisers would be required to file their amendments to Form ADV in less than 90 days after the end of the adviser's fiscal year. We strongly oppose accelerating the filing deadline for Form ADV for any timeframe less than 90 days after an adviser's fiscal year end. Many advisers need the full 90 days to review their businesses and provide the disclosure required by the current Form ADV and will need at least that much time to respond to the proposed disclosure requirements, particularly if they have multiple affiliates or private funds. If the filing timeframe is accelerated, the quality of the disclosure could be negatively impacted.

- Information Timeframe: The Commission should clarify the "as of" date or timeframe for all of the information submitted on Part 1 of Form ADV.

- Updating/Item 5.F(2): The Commission requests comment on whether advisers should be required to report regulatory AUM more frequently than annually. We do not believe more frequent reporting is appropriate. Clients are provided with updated AUM information in the brochure. More frequent updating of regulatory AUM will be time consuming and potentially confusing to clients who may see different AUM calculations in the brochure, Part 1, and other disclosure documents. In addition, more frequent updating could cause confusion regarding any need for advisers to switch between state and federal registration.

Glossary

- Client. The Form ADV instructions state that "you" means the investment adviser (*i.e.*, the advisory firm). Accordingly, the reference to "members of your family" does not make sense in the context of the firm. Instead, the instructions should state "such as family members of your supervised persons."

Part 1A, Instruction 2: SEC Registration

- Item 2.A.(11). The Commission may wish to consider whether to revisit the condition related to providing investment advice to fewer than 15 clients in light of the elimination of the private adviser exemption.

Part 1A, Instruction 5.b and Item 5.F: Calculating Regulatory AUM

- We generally support the implementation of a uniform method of calculating AUM in order to maintain consistency for registration purposes and for risk assessment purposes. In addition, we support the Commission's proposal to include in AUM the value of any private fund over which the adviser exercises continuous and regular supervisory or management services, regardless of the nature of the assets held by the

fund. However, we have a number of concerns about the specific components of regulatory AUM as set forth below.

- Instruction 5.b.(1)(a). Securities Portfolios. Given that "you" refers to the advisory firm, the reference to "your family" accounts is not technically correct in this instruction. The instruction should refer to your "supervised persons' or employees'" family accounts and "your proprietary accounts."

- Instruction 5.b.(2) Value of Portfolio. The Commission should clarify what it means when it states, "Do not deduct any outstanding indebtedness or other accrued but unpaid liabilities." It is not clear what constitutes "accrued but unpaid liabilities" or how an adviser would treat mutual funds, for example, which deduct accrued fees and expenses in calculating net asset value. Furthermore, in the Proposal, the Commission indicates that advisers should not deduct any borrowings. The Commission should clarify the treatment of borrowing and leveraging for purposes of regulatory AUM. Including borrowing in a gross asset value context would limit comparison with other investment vehicles, such as mutual funds, that do not reflect borrowing in financial statements.

- Instruction 5.b.(4) Value of Regulatory Assets Under Management. We support the use of the fair valuation method to help achieve the Commission's goals of having more consistent asset calculations and reporting across the industry and better application of its risk assessment program. We appreciate the flexibility to calculate fair value in accordance with the process disclosed in the private fund offering documents. The Commission requests comment on whether advisers should be required to fair value assets in accordance with U.S. generally accepted accounting principles (GAAP). We do not recommend imposing this requirement due to the fact that advisers are not required to have private funds audited and if they are audited, they do not have to be audited in accordance with GAAP. Many funds, particularly foreign funds, are not audited in accordance with GAAP. In other contexts, the Commission has acknowledged that other (non-GAAP) accounting standards may be appropriate. In addition, imposing a requirement to fair value assets in accordance with GAAP would be especially difficult if it would require any sort of revaluation of fund assets.

Item 1: Identifying Information

- O. The IAA fully supports the Commission's interpretation that the amount of assets for purposes of this reporting requirement is the adviser's total balance sheet assets as of its most recent fiscal year-end.

Item 4: Successions

- This item has long been a source of confusion and does not apply neatly to a wide range of transactions. The Commission has not issued guidance regarding this succession process since 1992. We would be happy to work with the Commission and its staff to revise this question and the accompanying guidance to more appropriately reflect a broader range of business transactions.

Item 5: Information About Your Advisory Business

- A and B. The Commission should clarify the "as of" date to identify the approximate number of employees. In addition, the Commission should modify the form to allow advisers to round responses up or down in order to provide additional flexibility with respect to an adviser's response. The Commission states that the additional employee data "would, for instance, permit us to develop ratios (*e.g.*, number of employees to assets under management of clients) that we can use to identify advisers to inform our risk-based examination program." We note that this ratio does not necessarily indicate risk, as some advisers may leverage the personnel of their affiliates or use the services of third parties for a wide range of functions.

- D. Most advisers typically do not attribute AUM to particular types of clients (or where they do, their internal categories may differ from the Commission's categories). Also, most advisers do not have this type of information readily available and would be required to undergo significant system enhancements in order to be able to provide this information. Accordingly, the Commission should not require advisers to provide AUM for particular types of clients. In addition, as noted below, the list of investors in Item 5.D does not match the client types listed in Item 7.B.1.A.17 of Schedule D.

- D. The Commission should clarify the categories of clients. In particular, the Commission should clarify whether government plans should be treated as other pension and profit sharing plans (7b) or state or municipal government entities (10). If advisers to state or local pension plans should use sub-item 10, a relatively minor number of plans would constitute "other" plans under sub-item 7b and that information would not be particularly useful to the Commission. Furthermore, the Commission should clarify what it means to be "subject to" ERISA. For example, certain plans are subject to some but not all of ERISA's provisions.

- G. It is not clear why the Commission proposes to add "educational seminars/workshops" to the list of advisory services. We assume that the Commission intends this category to indicate a separate and distinct service, as opposed to episodic meetings at which advisers educate existing clients or groups of clients regarding various issues related to the advisers' ongoing management of their accounts or events sponsored by third parties at which the advisers' supervised persons present. We request that the Commission clarify its intent with respect to this item. Similarly, we assume that the "newsletters" category denotes a separate subscription service rather than the newsletters that advisers typically send existing advisory clients about their investment strategies, market factors, and so forth.

- J. The Commission should clarify whether there is a materiality requirement for identifying the types of investments about which the adviser provided advice during the past year. As currently drafted, an adviser would be required to check the box for providing investment advice about any of the listed investments, even if such advice was an insignificant portion of the adviser's overall investment strategy or if the

adviser invested in the type of security only once. Nor would the disclosure necessarily indicate what types of investments the adviser is likely to make in the coming year. As a result, without a materiality or de minimis standard, the disclosure may be misleading for clients and is not likely to be valuable from a regulatory perspective.

Item 6: Other Business Activities

- We support the additional disclosure requirements. It is unclear, however, given that "you" is defined to mean the advisory firm, how that entity could be a natural person, such as a lawyer, accountant, registered representative, or agent.

Item 7: Financial Industry Affiliations and Private Fund Reporting

- A. The Commission should include instructions that clarify that, with respect to responses relating to natural persons (*e.g.*, accountant, lawyer), the adviser should respond affirmatively only for related persons that have a separate business (*e.g.*, as a lawyer or accountant) in that field. The question is not designed to elicit responses from firms regarding their in-house lawyers or accountants performing those functions as part of their duties for the advisory firm. *See, e.g., Frequently Asked Questions on Form ADV and IARD*, on the SEC's web site at http://www.sec.gov/divisions/investment/iard/iardfaq.shtml#item7a.

- B. We appreciate the Commission's efforts to eliminate duplicative reporting. The wording in the Form, however, indicates that an adviser would not be required to complete Section 7.B.1 of Schedule D for a private fund only if another adviser reports that information for such fund. This is confusing because it could be viewed as requiring an adviser to report on a private fund that would not otherwise be reported (*e.g.*, for certain foreign funds not offered to U.S. persons or for certain unregistered funds subadvised by a registered investment adviser.) If so, the wording should be modified to reflect such circumstances.

- B. The IAA supports the proposed instruction that enables an adviser to identify a fund by code in order to preserve the anonymity of a private fund client. The Commission should confirm, however, that the disclosure of a private fund's name by an adviser will not constitute a public offering within the meaning of the private placement exemption.

Item 7, Schedule D

- A. The Commission should confirm that the guidance previously issued for advisory firms that are part of a large organization that has hundreds of related persons that meet the definition of investment adviser under the Investment Adviser's Act of 1940 also applies to the financial services affiliates disclosure. Specifically, the Commission should confirm that an adviser can omit a related person from Section 7.A of Schedule D if the adviser (1) has no business dealings with the related person, (2) does not conduct joint operations with the related person, (3) does not provide advice that is formulated, in whole or in part, by the related person, and (4) the related person does not present any potential for conflict of interest with the adviser's

clients. *See Frequently Asked Questions on Form ADV and IARD*, on the SEC's web site at http://www.sec.gov/divisions/investment/iard/iardfaq.shtml#item7a.

- 7.A.6. The way the question regarding shared personnel and information is worded is confusing. We would be glad to work with the staff to suggest alternative wording.

- 7.B.1.A.12. Advisers should not be required to provide a summary of the current value of the fund's private investments broken down by asset and liability class and categorized in the fair value hierarchy established under GAAP. First, audits of private funds are not required, and if a private fund is audited, it is not required to be audited in accordance with GAAP. The summary and categorization in accordance with GAAP requirement imposes implicit auditing requirements that are not set forth in the applicable rules. Second, if a private fund is audited, given the timing, advisers might not have access to the required information because the audited financial statements are not due until 120 days after the fiscal year end. Third, the information requested is very detailed and it would be onerous for advisers to provide. Finally, the information may be of limited usefulness because it may change throughout the year, and might not be accurate shortly after filing.

- 7.B.1.A.13. In private offering documents, the manager often has the discretion to reduce minimum investment commitments. The Commission should modify the language in the Form to reflect that discretion.

- 7.B.1.A.14. The Commission should not require advisers to list the number of a private fund's beneficial owners. The adviser may not have access to the beneficial ownership information, particularly if the investor in the fund is a fund of funds or a charitable trust. As an alternative, the Commission could consider requiring firms to state the number of limited partners or LLC members or equivalent record owners (for private funds organized using other legal entity forms). Furthermore, the Commission should clarify that advisers are not required to report non-U.S. beneficial owners.

- 7.B.1.A.16 and 17. Advisers should not be required to indicate the percentage of the private fund that is beneficially owned by funds of funds or by certain groups of investors. Such information, to the extent it is available to the adviser, is confidential and proprietary. Particularly with respect to funds owned by relatively few large institutions, this information could be used to discern the identities, investment strategies, and movement of funds of certain clients. Public disclosure of this type of information could serve as a deterrent to investment in private funds by certain institutional clients. Furthermore, the list of investors in A.17 does not match the client types listed in Item 5.D.

- 7.B.1.A.13-18. Advisers should not be required to provide ownership information if they do not have access to the information requested. For example, we understand that securitized asset management funds (such as CDOs) are traded frequently in the

marketplace and advisers would not necessarily have access to ownership information. In addition, to the extent it is available, ownership information may change frequently and would not be meaningful to the Commission.

- 7.B.1.B.28. Add Yes/No boxes to respond to this question.

- 7.B.1.B.28(e). The Commission asks about whether account statements are sent to investors in the private fund. There is no requirement to send account statements to investors if the fund is audited and distributes its audited financial statements in accordance with the requirements. This question should be amended accordingly.

- 7.B.1.B.28(f)(1). We suggest that the Commission provide additional guidance about what constitutes assets "valued" by a third-party administrator.

Item 8: Participation or Interest in Client Transactions

- The Commission requests comment on whether it should require additional disclosure about advisers' receipt of soft dollar benefits, such as requiring advisers to quantify the benefits they receive or disclose the names of the brokers or dealers from whom the adviser receives soft dollar benefits. We do not believe the Commission should require disclosure of such detailed information, which is not required under the applicable regulations and is not contemplated by the Commission's guidance on soft dollars. Advisers may use dozens or even hundreds of brokers throughout the course of a year depending on the client's mandate and asset class managed and some of these brokers may be used infrequently to meet the requirements of a particular transaction. Disclosing this list would be burdensome without providing helpful information.[1] In addition, it would be extremely difficult, if not impossible, for advisers to specifically determine the actual cost or value of non-execution products or services received as part of a bundled commission charge. At most, advisers would be able to provide only rough guesses based on varying methodologies, which would render the information meaningless and confusing.[2] In addition, meaningful disclosure regarding brokerage practices is set forth in Part 2 of Form ADV.

Item 9: Custody

- As we noted in our comment letter on the custody rule,[3] Item 9 is confusing in its use of the terms "you" and "your related persons." Pursuant to the custody definition, "you" have custody if your related person has custody. The distinctions between Item 9A and 9B are therefore unclear. In addition, the custody definition limits imputed

[1] *See, e.g.*, IAA Letter to Florence Harman, Secretary, SEC, re Commission Guidance re Duties and Responsibilities of Investment Company Boards of Directors with respect to Investment Adviser Portfolio Trading Practices, IA-2763 (Oct. 1, 2008).

[2] *See, e.g.* IAA Letter to Department of Labor re: DOL Revisions to Form 5500, RIN 1210-AB06 (Sept. 19, 2006).

[3] IAA Letter to SEC re: Custody of Funds or Securities of Clients by Investment Advisers, File No. S7-09-09, Release No. IA-2876 (July 24, 2009).

custody to situations where "your related persons" have custody "in connection with advisory services you provide to clients." Items 9B and 9C do not include this "in connection with" component.

- C(4). This question should be amended to clarify that the accountant's report refers to the report issued for the most recent fiscal year.

- F. This question should be amended to allow advisers to report a range of custodians or to round the response up or down.

Item 9, Schedule D

- 9.C.6. For consistent wording, we suggest including the phrase "or that performed a surprise examination of *clients'* assets" in the question. In addition, this question should be amended to clarify that the accountant's report refers to the report issued for the most recent fiscal year.

- 9.D. Because the instruction to Item 7.A states that advisers should include foreign affiliates and requests additional detail about related persons that are qualified custodians, it is not clear why Section 9.D is needed or how it relates to Item 7.A.

Item 11: Disclosure Information

- We commend the proposed amendment to Item 11 that specifies whether the disciplinary information disclosed relates to the adviser or its supervised persons. Information about whether disciplinary history relates to the adviser as opposed to its affiliates is important to assessing risk. The Commission should consider other similar clarifications, such as indicating which responses relate to the same event and whether, if reported for a supervised person, the event occurred while the person was employed at the adviser.

Rule 222-2 and Rule 203A-3

- Apart from the amendments to Part 1 of Form ADV, the Proposal includes technical amendments to rule 222-2 regarding the definition of client that are inconsistent with the proposed conforming amendment to rule 203A-3(a)(4). Accordingly, we urge the Commission to use the same definition in rule 203A-3 as proposed in rule 222-2.