SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 275, and 279

[Release No. IA–1862; 34–42620; File No. S7–10–00]

RIN 3235–AD21

Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission and the state securities authorities are creating an electronic filing system for investment advisers. The system will permit investment advisers to satisfy their filing obligations with federal and state regulators with a single electronic filing made over the Internet. The system also will provide public access to information about investment advisers and persons who work for investment advisers. In connection with the development of the electronic filing system, we are proposing new rules under the Investment Advisers Act of 1940 and proposing to amend others. The new rules would require advisers to submit their filings electronically. Form ADV would be substantially updated and revised to accommodate electronic filing. Finally, we are proposing amendments that would require advisers to deliver to clients a narrative brochure written in plain English.

DATES: Comments must be received on or before June 13, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–10–00; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Lori H. Price, <pricel@sec.gov> or Jeffrey O. Himstreet, <himstreetj@sec.gov>, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rules 30–5 and 30–11 of the SEC's Organization and Program Management rules (17 CFR 200.30–5 and 200.30–11), new rule 203–3 and Form ADV–H; proposed amendments to rules 0–2, 0–7, 203–1, 203–2, 203A–1, 203A–2, 204–1, 204–2, and 204–3 (17 CFR 275.0–2, 275.0–7, 275.203–1, 275.203–2, 275.203A–1, 275.203A–2, 275.204–1, 275.204–2, and 275.204–3); and Form ADV, Form ADV–W, and Form 4–R (17 CFR 279.1, 279.2, and 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) (the Advisers Act or the Act). The Commission also is proposing to withdraw rules 204–5 and 206(4)–4 (17 CFR 275.204–5 and 275.206(4)–4) and Forms 5–R, 6–R, 7–R, and ADV–Y2K (17 CFR 279.5, 279.6, 279.7, and 279.9) under the Advisers Act.

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Executive Summary

The Commission and the state securities authorities are creating an Internet-based system of electronic filing for investment advisers. The system, which we call the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy filing obligations under state and federal laws by making a single electronic filing. Information contained in filings made through the IARD will be stored in a database that members of the public will be able to access free of charge through the Internet. The IARD, which is being built and will be operated for us by NASD Regulation, Inc. (NASDR), will give investors easy access to information about investment advisers.

Today we are proposing to amend our rules to require advisers to make filings with us through the IARD after the system begins to operate. In addition, we are proposing substantial amendments to our application, reporting, and disclosure requirements for investment advisers. Some of the amendments are designed to take advantage of electronic filing. Others reflect recent regulatory changes. And others are designed to improve the quality of information advisers must provide to their clients and prospective clients in their information statements (brochures).

I. Introduction

Since we implemented our EDGAR system in 1993, we have sought additional ways to take advantage of developments in information technology to provide investors with better access to market information.[1] More and more types of filings are made with us electronically each year.[2] As a

[1] Our EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system electronically receives, processes and disseminates documents required to be filed with us under the Securities Act of 1933 (15 U.S.C. 77a to –mm), the Securities Exchange Act of 1934 (15 U.S.C. 78a to –mm) (Exchange Act), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a to –79), the Trust Indenture Act of 1939 (15 U.S.C. 77sss to –bbbb), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 to –64) (Investment Company Act).

[2] In 1995, we required new Form 24F–2 (used by registered investment companies for annual notices required by rule 24f–2 under the Investment Company Act) to be filed through EDGAR. *See* Registration Fees for Certain Investment Companies, Investment Company Act Release No. 21332 (Sept. 1, 1995) (60 FR 47041 (Sept. 11, 1995)). In 1995, we also permitted electronic filing of Forms 3, 4 and 5 and notices of securities transactions on Form 144, required under the Exchange Act, as well as notices concerning proxy communications for limited partnership roll-up transactions. *See* Adoption of Updated EDGAR Filer Manual and Technical Rule Amendments, Securities Act Release No. 7241 (Nov. 13, 1995) (60 FR 57682 (Nov. 17, 1995)). In 1998, we allowed new mutual fund ''profiles'' to be filed through EDGAR. *See* New Disclosure Option for Open-End Management Investment Companies, Investment Company Act Release No. 23065 (Mar. 13, 1998) (63 FR 13968 (Mar. 23, 1998)). In 1999, we required Form 13F (filed by institutional investment managers), which we previously allowed to be filed electronically on a voluntary basis, to be filed electronically. *See* Rulemaking for EDGAR System,

result, investors have timely access to the latest reports and filings made by public issuers. Last year, we required broker-dealers to begin to register with us electronically.[3] Today we are proposing a number of rules and rule amendments designed to bring electronic filing to investment advisers.

Approximately 8,000 investment advisers are registered with the Commission under the Advisers Act. We estimate that another 12,000 are registered with state securities authorities. These advisers currently make filings with us and the states on paper, much as they have since 1940, when the Advisers Act was enacted. Investment adviser filings do not appear on our EDGAR system and are not easily accessible or widely available from other sources. In 1996, Congress passed legislation giving us authority to modernize our registration system and requiring us to provide investors with easy access to information about advisers.[4]

NASDR currently is building the IARD for us and the state securities authorities.[5] The IARD will permit advisers to make filings with the Commission and the states through the Internet. The information advisers submit will be stored in a database, and investors will have access to it by visiting a web site. The IARD will not only improve public access to information about advisers, it will also ease regulatory burdens on advisers by permitting a single electronic filing to satisfy SEC and state filing requirements.[6] It also will help us better monitor advisers and administer the federal securities laws. The IARD is described in Section II.A. of this Release.

Most of the filings made with the IARD will be on Form ADV, the Uniform Application for Investment Adviser Registration. Advisers use Form ADV to apply for registration with us and with the state securities authorities, and must keep it current by filing periodic amendments as long as they are registered.[7] We are proposing to require that new advisers apply for registration electronically, and that advisers currently registered with us re-submit their Form ADV to us through the IARD. The proposed new filing rules are described in Section II.B. and the proposed transition rules are described in Section II.C. of this Release.

Form ADV currently has two parts. Part I asks for information about an adviser's business, the persons who own or control the adviser, and whether the adviser or certain of its personnel have been sanctioned for violating the securities or other laws. It provides us with information we need to decide whether to grant an application for registration or to revoke a registration, and to manage our regulatory and examination programs. Our proposed changes to Part I are discussed in Section II.D.1. of this Release.[8]

Part II, or a written brochure containing the same information, must be delivered to clients before they engage the adviser and then offered to them each year.[9] Part II provides clients with information about business practices, fees and conflicts of interest the adviser may have with its clients. We are proposing that all advisers provide clients with a narrative brochure containing disclosure about the advisory firm written in plain English, and update the brochure at least once a year to reflect changes. We also are proposing to require that the firm brochure be accompanied by a supplement containing important information about the advisory personnel with whom the client will be dealing. Proposed Part 2A sets forth the information about the advisory firm that an adviser must include in its brochure. Proposed Part 2B sets forth the information about advisory personnel that an adviser must include in brochure supplements. These proposed changes are described in Section II.D.2. of this Release.

II. Discussion

A. The Investment Adviser Registration Depository

The IARD is being built and will be operated by NASDR under contracts with the Commission and the North American Securities Administrators Association, Inc. (NASAA).[10] The IARD will be modeled on NASDR's Web Central Registration Depository (CRD), which is used by broker-dealers to make filings with us, state securities authorities, and NASDR.[11] NASDR will perform certain administrative tasks related to the filing and public disclosure systems described below. It will not, however, act as a self-regulatory organization for advisers.[12]

1. The Investment Adviser Filing System

The IARD will be an Internet-based system that advisers will access through

Investment Company Act Release No. 23640 (Jan. 12, 1999) (64 FR 2843 (Jan. 19, 1999)). In 1999, we required Form N8–F (used to deregister a registered investment company), also previously filed electronically on a voluntary basis, to be filed electronically. *See* Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23786 (Apr. 15, 1999) (64 FR 19469 (Apr. 21, 1999)). In 1999, we also required investment companies to file codes of ethics through EDGAR as an exhibit to their registration statements. *See* Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[3] *See* Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 41594 (July 2, 1999) (64 FR 37585 (July 12, 1999)) (amending Exchange Act rules 15b3–1, 15Ba2–2, and 15Ca2–1 (17 CFR 240.15b3–1, 240.15Ba2–2, and 240.15Ca2–1)).

[4] National Securities Market Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code) (NSMIA). Section 303 of NSMIA added new section 203A(d) of the Advisers Act (15 U.S.C. 80b–3a(d)), which provides that ''(t)he Commission may, by rule, require an investment adviser—(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any entity designated by the Commission for that purpose; and (2) to pay the reasonable costs associated with such filing.'' Section 306 of NSMIA provides that ''(t)he Commission shall—(1) provide for the establishment and maintenance of a readily accessible telephonic or other electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers and persons associated with investment advisers; and (2) provide for prompt response to any inquiry described in paragraph (1).'' Section 306 was not codified.

[5] NASDR is a wholly owned subsidiary of the National Association of Securities Dealers (NASD), a self-regulatory organization which supervises broker-dealers that conduct a public business in securities other than on an exchange of which the broker-dealer is a member.

[6] In general, this Release discusses our rules and the changes we are proposing that affect advisers registered with us. The state securities authorities are likely to make similar changes that affect advisers registered with the states.

State-registered advisers filing through the IARD can also satisfy Department of Labor (DOL) filing requirements. A state-registered adviser currently must file Form ADV with DOL to be an ''investment manager'' for purposes of the Employee Retirement Income Security Act (ERISA). 29 U.S.C. 1002(38)(B)(ii). DOL will treat an adviser as having satisfied this filing requirement when its Form ADV is available to DOL ''from a centralized electronic * * * database.'' *See* Act of Nov. 10, 1997, Pub. L. No. 105–72, 111 Stat. 1457 (adding explanatory note ''Availability of Documents Via Filing Depository'' to 29 U.S.C. 1002).

[7] *See* rules 203–1 and 204–1.

[8] We are changing the numbering of the parts of Form ADV from Roman to Arabic numbers: Part I to Part 1, Part II to Part 2. References in this Release to Part I or Part II refer to current Form ADV; references to Part 1 or Part 2 refer to the proposed form. The paper version of Form ADV, as proposed to be amended, is included as Appendix A of this Release.

[9] *See* rule 204–3.

[10] NASAA represents the 50 U.S. state securities authorities responsible for the administration of state securities laws, also known as ''blue sky laws.'' Currently, 49 states (all except Wyoming), the District of Columbia, Guam, and Puerto Rico have investment adviser statutes. *See* <http://www.nasaa.org/search/memberslinks.html> (last visited Mar. 15, 2000).

[11] For a description of the CRD system, *see* Securities Exchange Act Release No. 41594, *supra* note 3.

[12] Only Congress can grant such authority. *See* The Maloney Act, Pub. L. 75–719, 52 Stat. 1070 (1938) (codified as amended at 15 U.S.C. 78*o*, authorizing the Commission to register national securities associations).

computers in their offices, without the need for specialized hardware or software. An adviser will be able to use the system to apply for registration, amend its registration, and withdraw from registration.[13] An SEC-registered adviser will also be able to electronically send ''notice filings'' to the states and pay state fees through the IARD.[14]

The IARD will contain a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. To use the system, an adviser will visit a designated web site, which it will be able to enter through our web site.[15] Persons visiting the web site to make a filing will indicate whether they wish to apply for registration, amend an existing registration, or withdraw from registration as an investment adviser. Persons wishing to register as an investment adviser will be presented with a blank Form ADV, which they would complete on-line. A partially completed form could be saved in draft form.[16] A ''help'' function will be available to answer questions,[17] and an on-line glossary will allow persons completing the form to review the definition of key terms used in the form.[18]

The IARD will present an adviser completing Part 1 of Form ADV with only those items relevant to its application. An adviser indicating that it is registering with us, for example, will not see items that apply only to advisers registering with the states.[19] The system also will prevent an adviser from submitting an incomplete form or from entering inconsistent information at different places on the form.[20] These features should help prevent the most common errors we see in applications for registration under the Advisers Act and speed the registration process.

We also have designed the system to provide efficiencies for firms registered with us as both an investment adviser on Form ADV through the IARD and a broker-dealer on Form BD[21] through the CRD. These advisers will be able to link their responses to common items to avoid entering the data twice.[22]

Unlike the check-the-box and multiple-choice format of proposed Part 1, proposed Part 2 of Form ADV would require the adviser to prepare a narrative brochure containing disclosure about the advisory firm.[23] NASDR will design the part of the system that will accept Part 2.[24] Once this part of the system is built, an adviser will be able to prepare its brochure on its own computer using its word processing software and transmit the file to the IARD.[25] We do not anticipate, however, that brochure supplements will be submitted to the IARD.

2. The Public Disclosure System

All current information submitted to the IARD by advisers will be available to members of the public through our web site without charge.[26] Interested persons will be able to search the database to retrieve information about advisory firms and persons associated with them.[27] Anyone with access to the Internet will be able to look up an adviser and review its Form ADV—including the disciplinary records of the adviser and persons associated with the adviser.[28]

3. System Implementation

We expect that the IARD will begin to receive filings later this year. We anticipate that the entire system will be ''rolled out'' in four separate releases:[29]

- First, SEC-registered advisers and applicants for SEC registration will begin using the system to file Part 1 with us and submit notice filings to state securities authorities.[30] We expect that most (if not all) state securities authorities will accept ''notice filings'' from SEC-registered advisers through the IARD at that time, and that many state securities authorities also will begin to require advisers registered with them to use the system. We understand, however, that some state securities authorities lack statutory authority to require advisers registered with them to file through the IARD and will postpone

[13] Institutional investment managers will continue to make Form 13F filings on our EDGAR system. *See* Investment Company Act Release No. 23640, *supra* note 2. Form 13F filings are made by many firms other than investment advisers, and it would not be feasible to include these filings on the IARD.

[14] Many states require an SEC-registered adviser doing business in their state to provide them with copies of the adviser's SEC filings and to pay fees. *See* section 201(c) of the Uniform Securities Act (1999). These are usually referred to as ''notice filings.'' *See* section 307(a) of NSMIA (states are permitted to require SEC-registered advisers to file with them documents advisers filed with the Commission ''solely for notice purposes * * * and (pay) any required fee''). Section 307 was not codified.

[15] In order to use the system, an adviser first will complete a paper request for IARD filer access and submit it to NASDR. NASDR then will assign a user name and password, which persons authorized to file on behalf of the adviser would be required to use to submit filings to the IARD.

[16] An adviser will be able to save one draft of each form type for up to 60 days. While an adviser will be not able to download the draft form, it will be able to print either the entire draft form or selected pages.

[17] The ''help'' function will provide answers to frequently asked questions and guidance for completing the electronic Form ADV. Our staff will formulate answers to the frequently asked questions and update them from time to time.

[18] Defined terms appear in italic on the forms, both on the proposed paper forms and on the electronic forms in the IARD. The glossary is included in Appendix A of this Release.

[19] *See* discussion of additional requirements for state-registered advisers *infra* at Section II.D.1.b. of this Release.

[20] For example, if an adviser indicates that it has assets under management of less than $25 million, the system would preclude the adviser from indicating that it is eligible for SEC registration because it has assets under management of $25 million or more. *See* proposed Items 2.A(1) and 5.F(2)(c) of Part 1A of Form ADV.

[21] 17 CFR 249.501.

[22] *See* discussion of IARD functionality for the Disciplinary Reporting Pages (DRPs) and Schedules A and B, *infra* notes 85 and 101, respectively.

[23] *See* discussion of Part 2 *infra* at Section II.D.2. of this Release.

[24] *See* discussion of system implementation *infra* at Section II.A.3. of this Release.

[25] Using their word processing software, advisers may be required to convert the word processing file to a standard file format, such as HyperText Markup Language (HTML) or American Standard Code for Information Interchange (ASCII).

[26] The IARD data will be available for commercial use, for a fee, and the proceeds will be used to maintain and upgrade the IARD.

[27] Members of the public will be able to search the IARD for information about a specific individual once the system begins accepting investment adviser representative filings on Form U–4 (Uniform Application for Securities Industry Registration or Transfer) and Form U–5 (Uniform Termination Notice for Securities Industry Registration). *See* discussion of system implementation *infra* Section II.A.3. of this Release.

[28] Section 15A(h)(3)(i) of the Exchange Act (15 U.S.C. 78*o*-3(h)(3)(i)) requires a registered securities association to establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and to promptly respond to any of these inquiries in writing. NASDR currently makes certain information about broker-dealers and their agents available on its web site. Disciplinary information about broker-dealers and their agents is not available on NASDR's web site, although NASDR will make it available in written form upon request. NASDR has not made broker-dealer disciplinary information available on its web site because the Exchange Act provides NASDR with immunity from lawsuits challenging the accuracy of disciplinary information it provides in *written* form. NASDR has asked Congress to amend the Exchange Act to provide legal immunity for information made available on the Internet. *See* Ruth Simon and Aaron Lucchett, *Disciplinary Records of Stockbrokers Won't be on Web this Spring After All,* Wall St. J., Jan. 18, 1999, at B7. If immunity is granted, we hope that the CRD and the IARD can be linked so that a single search will provide information from both databases. This may be helpful to an investor who is unsure whether a person or firm is registered as a broker-dealer or an adviser. Until then, the IARD will warn investors that they should consider contacting NASDR for possible additional disciplinary information.

[29] We understand that some would prefer that all components of the system begin operating together at the earliest possible date. We share that preference. Implementing the system in stages, however, permits NASDR to reduce its programming costs, which would otherwise have to be offset by higher filing fees.

[30] Section II.C. of this Release discusses our proposed transition process for advisers registered with us.

full participation in the system until necessary legislation is enacted.[31]

• Second, NASDR will release the public disclosure system, which should begin operating a few months after the first filings are made on the system.[32]

• Third, NASDR will release the state investment adviser representative licensing system. We expect that it will begin operating a few months after the public disclosure system is released. It is likely that some states will not participate until their laws have been changed.

• Fourth, the IARD will begin to accept Part 2A of Form ADV.

4. Filing Fees

The Advisers Act permits the operator of the IARD to charge reasonable fees to cover system costs.[33] We will pay NASDR to build the system; filing fees will be used to pay for its operation and maintenance. NASDR will charge fees for initial applications and annual updating amendments.[34] These fees will be based on the amount of assets an adviser has under management and the number of states to which the adviser submits notice filings. We expect IARD annual filing fees to range from $200 for smaller advisers to $400 for the largest advisers.[35] We must approve any fee or fee change, and we will do so only if the proposed fees are reasonable and necessary to support proper operation of the IARD. The IARD also will collect registration, licensing and notice fees on behalf of state securities authorities.[36] All fee revenues will be segregated from NASDR's other assets and retained for the exclusive benefit of the IARD. The system will be audited annually by an independent public accountant, the results of which will be reported to us and NASAA. We will provide a copy of the report to interested persons.

Advisers using the system will be required to establish an account with NASDR and maintain funds in the account necessary to pay state fees as well as IARD filing fees.[37] The IARD will automatically calculate the amount of the fees due based on information provided by the adviser on its Form ADV, debit the adviser's account, and remit amounts due to the appropriate state securities authorities. The IARD will not accept a filing if insufficient funds are on account to pay fees due.

The one-stop filing and fee collection functions of the IARD should substantially reduce regulatory burdens on advisers. Larger advisers, which typically will impose more costs on the system by submitting notice filings and paying fees in multiple states, will benefit the most. We believe, therefore, that it is appropriate that larger advisers pay higher fees to support the system.

B. Proposed Amendments to SEC Rules

To implement the IARD, we are proposing new rules and amendments to rules that govern the process by which advisers apply for registration with us, amend their registrations, and withdraw from registration.[38] This section discusses the proposed rules and rule amendments.[39]

1. Applications for Registration on Form ADV

We propose to amend our rules under the Advisers Act to require all advisers applying for registration with us to file Form ADV through the IARD.[40] Each adviser currently registered with us would be required to re-submit its Form ADV to us using the IARD and the revised form.[41] We will publish a schedule of dates by which each adviser registered with us must re-submit its Form ADV through the IARD.[42] Paper filings would be accepted only if the adviser has obtained a continuing hardship exemption, as described below.[43]

2. Amendments to Form ADV

After an adviser has submitted an application for registration on Form ADV or re-submitted its Form ADV through the IARD, the adviser will have to make all amendments through the system.[44] Our rules would continue to require each adviser to update its Form ADV at least once a year, or more frequently depending upon the information in the form that becomes

[31] We understand that these state securities authorities are able to accept broker-dealer filings exclusively through the CRD because NASDR mandates the use of the CRD in its capacity as the self-regulator of its members. NASDR has no similar authority over investment advisers. Anyone interested in a particular state's participation in the IARD should contact the state's securities authority or NASAA.

[32] During the period of time after advisers begin to submit filings to the system and before the public disclosure system is operational, these filings will continue to be available from our public reference room.

[33] Section 203A(d). *See supra* note 4 (section 203A(d) of the Advisers Act authorizes us to require advisers to pay the costs associated with electronic filing).

[34] NASDR does not plan to charge fees for other amendments to Form ADV or for filing Form ADV–W (17 CFR 279.2), the Notice of Withdrawal from Registration as Investment Adviser.

[35] As discussed in Section II.C. of this Release, *infra,* we will require advisers that are registered with us to re-submit their registration forms through the IARD. We expect that the IARD filing fees for these one-time submissions and for initial applications will be approximately twice the amount of the IARD annual filing fees. When the IARD accepts investment adviser representative filings on Form U–4 and Form U–5, *supra* note 27, NASDR will establish filing fees for these filings.

[36] We do not charge any registration fees for investment advisers. *See* Changes Selected Rules In Order To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952, Investment Advisers Act Release No. 1578 (Sept. 17, 1996) (61 FR 49957 (Sept. 24, 1996)) (eliminating $150 initial application fee).

[37] Advisers that are members of the NASD (because they also are broker-dealers) will be able to use their existing CRD accounts to pay IARD filing fees as well as state registration and notice fees. We currently are exploring with NASDR ways for advisers to transfer funds to NASDR for filing and state fees.

[38] Under the proposed rule amendments, advisers will file Forms ADV and ADV–W through the IARD system. We receive relatively few filings on Form ADV–E (17 CFR 279.8), and accountants that conduct surprise inspections of advisers would continue to file that form with us on paper. We expect to receive few filings on proposed Form ADV–NR, the execution form for non-resident general partners and managing agents of investment advisers (which would be substantially similar to Form 7–R), and we therefore propose to require paper filings of this new form. *See* discussion of proposed Form ADV–NR *infra* at section II.D.3. of this Release and proposed Form ADV–NR is included as Appendix D of this Release. Advisers also would file requests for hardship exemptions in paper format. *See* discussion of proposed hardship exemptions *infra* at section II.B.4. and proposed Form ADV–H *infra* at Appendix C. of this Release.

[39] In addition to the rule changes discussed in detail in this Release, we are proposing to withdraw rule 204–5 (Year 2000 Reports) and Form ADV–Y2K.

[40] Proposed rule 203–1(b). The Advisers Act provides that, within 45 days after a person files an application for registration with us, we must either grant registration under the Act or institute a proceeding to determine whether registration should be denied. Section 203(c)(2) (15 U.S.C. 80b–3(c)(2)). Under the proposed amendments, an application for registration under the Act that is filed with the IARD would be considered filed with us on the date that it is accepted by the IARD. Proposed rule 203–1(c). As discussed above, the IARD will only accept filings that are complete and for which filing fees have been paid. Proposed rule 203–1(d).

We explained in a 1997 release that an adviser and its affiliates could submit a single registration on Form ADV. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)) at n.64. Our experience with advisers that have attempted such a registration has convinced us that Form ADV does not, and cannot be revised to, accommodate this registration, since each adviser may have different responses to the same items. Therefore each affiliated adviser would be required to file a separate Form ADV.

[41] Proposed rule 204–1(b).

[42] *See* discussion of transition process *infra* Section II.C. of this Release. Until the date on which an adviser must re-submit its Form ADV, that adviser will continue to make all required amendments on paper using the current (*i.e.,* not revised) Form ADV. When we adopted Uniform Form ADV in 1985, we required all advisers registered with us to re-submit the form. *See* Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 991 (Oct. 15, 1985) (50 FR 42903 (Oct. 23, 1985)).

[43] The proposed hardship exemptions are discussed *infra* in Section II.B.4. of this Release.

[44] Proposed rules 203–1(b) and 204–1(b).

stale.[45] To amend its Form ADV, an adviser would access its Form ADV through the IARD and simply type over the stale information.[46] The adviser would then electronically ''sign''[47] the form and submit it to the IARD.[48] The IARD would replace the stale information with the new information submitted and record the date of the change.[49]

3. Withdrawal From Registration

Investment advisers generally withdraw from SEC registration as a result of ceasing operations or switching to state registration.[50] In either case, an adviser would file Form ADV–W with the IARD.[51] The IARD will pre-populate the Form ADV–W with information from the adviser's most recent Form ADV filing; the adviser would then complete Form ADV–W, electronically sign it, and submit it to the IARD. We propose to make investment adviser withdrawals effective upon filing, eliminating the current 60-day waiting period.[52] Eliminating the 60-day waiting period for investment adviser withdrawals would smooth the transition process for advisers switching to state registration.

An adviser withdrawing from SEC registration and switching to state registration currently has a grace period to allow time for the adviser to register with the states.[53] The preemptive provisions of the Advisers Act, however, preclude the states from regulating the adviser until it has withdrawn from SEC registration.[54] We propose to adopt a rule amendment that would suspend preemption of a state's laws when the adviser registers with that state.[55] Once registered with a state, an adviser would become subject to that state's adviser statute while also remaining subject to SEC regulation until it files Form ADV–W to withdraw from SEC registration.[56] Once the adviser has filed Form ADV–W with us, the adviser generally would be subject only to state regulation.

4. Hardship Exemptions

In proposing to require advisers to file electronically, we are assuming that advisers have computers and access to the Internet, and will be able to submit filings through the IARD.[57] We recognize, however, that there may be circumstances under which an adviser cannot make an electronic filing, and thus we are proposing two hardship exemptions that advisers could request by filing a short form with NASDR.[58]

An adviser that files electronically could request a temporary hardship exemption if unexpected difficulties prevent it from filing, such as a computer malfunction or electrical outage.[59] The exemption would be available upon filing and allow an adviser to delay the deadline for an electronic filing for seven business days.[60] *A continuing hardship exemption* would be available only to an adviser that is a ''small business''[61] and can demonstrate that the electronic filing requirements would create an undue hardship (*e.g.,* the adviser does not have a computer and is unable to

[45] For the rules governing updating of Part 1A, *see* proposed rule 204–1(a) and proposed General Instruction 3 to Form ADV. For the rules governing updating of Part 2, *see* proposed rule 204–3, proposed Instruction 8 to Part 2A, and proposed Instruction 7 to Part 2B.

[46] When an adviser makes its annual updating amendment, information it has previously submitted regarding the amount of its assets under management and other information relevant to its eligibility for SEC registration would not appear. As a result, an adviser would be forced to affirmatively restate its basis for continued eligibility. This approach is not substantively different than the current requirement to re-file Schedule I each year, even if none of the information has changed. *See* rule 204–1(a). As discussed below, we are proposing to bring the information requirements of Schedule I into Part 1A of the form as Item 2.A. and eliminate Schedule I. *See* discussion *infra,* Section II.D.1.a. of this Release.

[47] The process of executing Form ADV and filing it through the IARD system will be an ''electronic signature,'' but not a ''digital signature,'' which is an electronic sequence of bits encrypted by a ''key'' belonging only to the person ''signing'' the document. *See generally* Information Security Committee, Electronic Commerce Division, Science and Technology Section, American Bar Association, Digital Signature Guidelines § 1.11 (Aug. 1, 1996) (available at <http://www.abanet.org/scitech/ec/isc/dsgfree.html> (last visited Mar. 15, 2000)).

[48] *See* discussion of electronic signatures and the proposed execution pages of Form ADV *infra* at Section II.D.3. of this Release. An adviser that has been granted a continuing hardship exemption would amend its Form ADV by submitting Page 1, the appropriate execution page, and each page on which a change is made with the item number circled for which the response is changed. *See* discussion of proposed hardship exemptions at Section II.B.4. of this Release and proposed General Instruction 13 to Form ADV.

[49] All information replaced by the adviser will be retained on the IARD and will remain accessible, although not through the public disclosure system. The public disclosure system will provide access only to current information about each adviser, including disciplinary events occurring during the past ten years. *See* discussion of public disclosure system *supra* at Section II.A.2. of this Release.

[50] An adviser might ''switch'' from SEC to state registration because its assets under management have decreased to below $25 million and therefore it is no longer eligible for SEC registration. *See* section 203A(a) (15 U.S.C. 80b–3a).

[51] Proposed rule 203–2. The proposed amendments to Form ADV–W are discussed *infra* at Section II.E. of this Release and proposed Form ADV–W is included as Appendix B of this Release.

[52] When we adopted the 60-day waiting period of rule 203–2(b), our enforcement remedies were limited primarily to suspending or revoking an adviser's registration, and the waiting period was intended to give our staff the opportunity, in appropriate cases, to investigate or institute proceedings against the adviser before it withdrew its registration. *See* Adoption of Form ADV–W and Amendment of Rule 203–2 Under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 213 (Nov. 13, 1967) (32 FR 16151 (Nov. 25, 1967)). This 60-day delay is no longer necessary, as we now have broader enforcement remedies that may be imposed on all advisers, registered or not. *See* sections 203(i) (fines), (j) (disgorgement), and (k) (cease and desist orders) (15 U.S.C. 80b–3(i), (j) and (k)). We also propose to amend our procedural rules to delete a provision allowing our staff to determine whether a withdrawal should become effective ''sooner than the normal 60-day waiting period.'' *See* rule 30–11(b)(2)(ii) (17 CFR 200.30–11(b)(2)(ii)).

[53] Rule 203A–1(c) (90 days).

[54] Section 203A(b) of the Act (15 U.S.C. 80b–3a(b)) preempts state laws that would require the registration, qualification and licensing of investment advisers registered with the Commission. *See* Investment Advisers Act Release No. 1633, *supra* note 40 at II.H.1.

[55] *See* proposed rule 203A–1(b)(2)(ii). We also are proposing minor amendments to the rule for eligibility for SEC registration by redrafting the rule in plain English and revising it to reflect our interpretation that an adviser is ''regulated or required to be regulated'' if its principal office and place of business is in a state that has enacted an investment adviser statute. *See* Investment Advisers Act Release No. 1633 *supra* note 40 at II.E.1.

[56] An adviser no longer eligible for SEC registration may shorten the time it is subject to regulation by both the Commission and states by withdrawing from SEC registration promptly after registering with the appropriate states. We adopted a rule similar to the switching rule to assist the Ohio Securities Division in implementing a new investment adviser statute enacted in that state. *See* rule 203A–6 (17 CFR 275.203A–6) and Transition Rule for Ohio Investment Advisers, Investment Advisers Act Release No. 1794 (Mar. 25, 1999) (64 FR 15860 (Apr. 1, 1999)).

[57] A 1998 industry survey of registered investment advisers noted that all respondents use the Internet. According to the survey, advisers ''new to the business or those with less than $100 million of assets under management are more active users of the online channel than are higher-net-worth (advisers).'' *See* Phil Clark, Cerrulli Survey; Advisers Flock to Internet for Research and Fund Data, *Fund Marketing Alert,* July 6, 1998 at 1. In 1999, the Institute of Certified Financial Planners (ICFP) and Morningstar also conducted a survey of financial planners and found that 99% of those surveyed had Internet access. *See* ICFP/Morningstar, *Work/Computer Environment Among RIAs* (available in File No. S7–10–00). Those advisers that cannot submit electronic filings themselves can obtain the assistance of a filing service—a firm that provides assistance to advisers and broker-dealers in preparing and making regulatory filings. We expect to maintain a list of filing services that an adviser may retain to submit filings on the IARD system.

[58] All requests for a hardship exemption would be submitted on paper to NASDR on proposed Form ADV–H, which is included as Appendix C of this Release. The proposed hardship exemptions are similar to exemptions for issuers that make filings on our EDGAR system. *See* rules 201 and 202 of Regulation S–T (17 CFR 232.201 and 202).

[59] *See* proposed rule 203–3(a)(1).

[60] *See* proposed rule 203–3(a)(3). If the circumstances causing the temporary hardship persist, the adviser would have to make other arrangements to file electronically.

[61] An investment adviser generally is a small business if it (a) Manages assets of less than $25 million, (b) has total assets of $5 million or less, and (c) is not in a control relationship with another investment adviser that is not a small business. Rule 0–7 (17 CFR 275.0–7).

afford a filing service). If we grant a continuing hardship exemption, the adviser would file on paper with NASDR, which would then convert the filing to electronic format and charge the adviser an additional fee to cover conversion costs.[62] Since primarily larger advisers are registered with us, we expect that few would qualify for a continuing hardship exemption. We request comment on whether a continuing hardship exemption is necessary for SEC-registered advisers.

C. Proposed Transition to Electronic Filing

When we adopt these amendments, we will provide an effective date that will correspond to the commencement of operations of the IARD. After that date, all applicants for registration must file their Form ADV and any amendments electronically through the IARD. We expect to publish a schedule by which advisers registered with us on the effective date will re-submit their registration forms to us through the IARD. We are asking for volunteers to be among the first group of advisers to submit their registration to the IARD.[63] We encourage advisers that have used the CRD to volunteer. The experiences of this first group will alert us to any problems with the system and allow NASDR to make adjustments. We request comment on our proposed transition process. How soon after the adoption of the new rules and revised form can advisers be ready to submit their Form ADVs through the IARD?

As discussed above, a later release of the IARD will ultimately accept Part 2A of Form ADV.[64] We propose to require each adviser to file its brochure with us when it makes its first annual update after the IARD begins to accept Part 2A.[65] During the interim period, advisers will not be required to submit their brochures to us (either in electronic or paper form), but will, instead, be required to keep them and make them available to our staff.[66] At the request of NASAA, we have included a provision in our proposed rules that a brochure retained by the adviser would be considered ''filed'' with us.[67] As a result, until advisers submit Part 2A to the IARD, the state securities authorities could require SEC-registered advisers to file a copy of Part 2A (on paper) with them.[68]

D. Proposed Revisions to Form ADV

We are proposing substantial revisions to Form ADV.[69] We have redrafted many items in simpler, more direct language, and have included brief explanations (in the form) of why we need the requested information. We believe that these changes will make it easier for persons to complete the form. The items continue to be drafted broadly to apply to the different types of advisory organizations registered with us and the state securities authorities. We request comment generally on the organization of the form and the clarity of the language we have used.

1. Part 1

Part 1 of Form ADV asks for information about the adviser and persons associated with the adviser. We need this information to decide whether to grant an application for registration or revoke a registration, and to manage our regulatory and examination programs. Some of the changes we are proposing in Part 1 are necessary to accommodate electronic filing. Many are in response to developments since Uniform Form ADV was adopted in 1985.[70] The most significant regulatory development affecting investment advisers since 1985 occurred in 1996 when Congress passed NSMIA, dividing regulatory jurisdiction over investment advisers between the Commission and the states.[71] As a result, advisers are no longer required to register with both. Larger advisory firms (generally, those with at least $25 million of assets under management) register only with us, but often must send notice filings to the states and pay state fees.[72] Smaller advisers register with one or more states,[73] not with us, and most of our regulatory requirements do not apply to them.

The changes made by NSMIA have allowed us to substantially reorganize Part 1, which we propose to divide into two parts. All advisers would complete Part 1A, while only state-registered advisers would complete Part 1B.[74] This new organization would allow SEC-registered advisers (and persons applying for SEC registration) to avoid responding to items requiring information we do not need.

a. Part 1A

Part 1A would require an adviser to provide information describing itself and its business through a series of fill-in-the-blank, multiple-choice, and check-the-box questions. As proposed, Part 1A consists of 12 items that request information similar to that requested by current Form ADV.[75] We are proposing a number of changes, the most significant of which are discussed below.

i. *Identifying Information*. We propose to revise the identifying information we require about the adviser to reflect new information we need. For example, we

[62] Although the adviser would submit Form ADV–H to NASDR, our staff, under authority delegated by us, would grant or deny all requests for a continuing hardship exemption. *See* proposed rule 30–5(e)(7) of our Organization and Program Management Rules (17 CFR 200.30–5(e)(7)).

[63] To volunteer, send an e-mail with the adviser's name, SEC 801 number, CRD number (if any), and the name, phone number, and e-mail address of a contact person to iard@sec.gov.

[64] As discussed in Section II.A.3. of this Release, only the firm brochure prepared in response to Part 2A will be submitted through the IARD. We are not proposing to require advisers to file their brochure supplements prepared in response to Part 2B.

[65] We will notify advisers when the IARD begins to accept Part 2A of Form ADV and anticipate providing a grace period before requiring any advisers to file Part 2A electronically. *See* proposed rules 203–1(b)(2) and 204–1(c). Advisers would be required, however, to prepare their brochure in accordance with Part 2 of Form ADV, and to deliver and offer to deliver these brochures in accordance with amended rule 204–3, no later than the date by which all advisers must have re-submitted their Part 1A to the IARD. In addition, advisers would have a 30-day transition period, beginning on the date by which all advisers must have re-submitted their Part 1A to the IARD, to provide their new brochures and brochure supplements to existing advisory clients. *See* discussion of Part 2 and rule 204–3, *infra* at Section II.D. of this Release.

[66] Proposed rule 203–1(b)(2).

[67] *Id.*

[68] *See* discussion of ''notice filings'' *supra* note 14 and accompanying text. As a result of statutory changes made by NSMIA, a state securities authority can only require an SEC-registered adviser to file with the state copies of documents the adviser filed with us. *See* section 307(a) of NSMIA. To accommodate the state securities authorities' request to receive a copy of a document that we do not require SEC-registered advisers to file with us, we are proposing to deem that the filing was made with us.

[69] The paper version of Form ADV would only be used by an adviser with a continuing hardship exemption from the requirement to file the form electronically. The electronic version of the form will elicit the same information but will have minor differences necessary to reflect and, in some cases take advantage of, an electronic environment. For example, the text of Item 2.B. on the paper form would require an adviser amending its Form ADV to circle the box next to the name of the state that is no longer marked and therefore should no longer receive the adviser's notice filings. On the electronic form, the adviser would be directed to ''uncheck'' the appropriate box.

[70] Investment Advisers Act Release No. 991, *supra* note 42.

[71] *See* section 203A of the Advisers Act (codifying Section 303 of NSMIA).

[72] *See* discussion of ''notice filings'' *supra* note 14.

[73] All advisers in Wyoming and the U.S. Virgin Islands (the only U.S. jurisdictions that do not have an investment adviser statute) and those whose principal office and place of business is in a foreign country register with us regardless of the amount of assets under management. *See* section 203A(a) of the Advisers Act.

[74] Part 1B is discussed in Section II.D.1.b. of this Release.

[75] Many of the items in Part 1A appear currently in Part I. Part 1A also includes several items that appear currently in Part II. *See* proposed Items 5.D., 5.E., 5.G., 6, 7, and 8. As proposed, Part 2 will not require advisers to enter data in discrete fields. *See* discussion of Part 2 of Form ADV *infra* Section II.D.2. of this Release.

would ask for the CRD number of the adviser (if it has one), any web site addresses of the adviser,[76] an e-mail address of a person we can contact about the form, and the fax number of the adviser.[77] The identifying information would be included in Item 1 of Part 1A of the form, and multiple or additional narrative responses to certain sub-items would be included on Schedule D.[78] Schedule I, which currently requires information relevant to whether the adviser should be registered with us or the state securities authorities, would be incorporated into the body of Form ADV in a new Item 2A.[79]

ii. *Educational and Business Background*. We propose to delete the requirements that an adviser report the educational and business background of its personnel.[80] Instead, advisers would be required to provide this information to clients in the adviser's brochure or brochure supplements.[81]

iii. *Disciplinary Disclosure*. We propose several amendments to the item requiring disclosure of disciplinary information about the adviser and certain of its advisory personnel.[82] Many of these amendments update the form, and reflect changes that we have made to Form BD over the years.[83] These changes will also permit advisers that are registered as broker-dealers to electronically copy and link disciplinary disclosure made in response to Form BD on NASDR's CRD system without re-typing the data into the IARD.[84] As proposed, each adviser—

• Would complete a Disciplinary Reporting Page (DRP) if it responds affirmatively to any of the disciplinary questions.[85] We are proposing three DRPs, one each for criminal, civil, and regulatory actions. The DRPs would elicit details regarding each disciplinary event in a structured format and replace current Schedules D and E.[86] The structured format, which we currently use in Form BD, is designed to yield better information than the free-text format of the current schedules.[87]

• Would only report disciplinary events occurring in the past ten years.[88] Currently, some questions limit reporting to events that occurred no more than ten years ago, but others have an unlimited reporting period.[89] Our authority to deny or revoke an adviser's registration for the most serious events—those involving criminal convictions—is limited to ten years following conviction,[90] a limitation recently reaffirmed by Congress.[91] Although we have authority to deny or revoke registration based upon lesser (civil or administrative) sanctions

[76] We visit web sites sponsored by advisers registered with us as part of our routine examinations.

[77] *See* proposed Items 1.E., 1.I., 1.J. and 1.F(4), respectively, of Part 1A of Form ADV. We are proposing to ask for the social security number and date of birth of control persons reported on Schedules A and B and persons for whom a Disciplinary Reporting Page is filed (discussed below) to permit the IARD to distinguish between persons who share the same name. To protect the privacy of these persons, the social security numbers will *not* be available on the public disclosure system. *See* Amendments to Forms and Schedules to Remove Voluntary Provision of Social Security Numbers, Securities Act Release No. 7424 (June 25, 1997) (62 FR 35338 (July 1, 1997)) (removing social security numbers from filings publicly available on EDGAR). Similarly, the public disclosure system will not report the home address of a sole proprietor (required by proposed Item 1.H.), unless the adviser's home address is also its principal office and place of business (required by proposed Item 1.F.).

[78] Proposed Schedule D would be the continuation schedule for Part 1A. Unlike current Schedule E, proposed Schedule D is structured and formatted based on the specific information to be entered on it.

[79] In addition, proposed Item 6.A. would ask whether the adviser is actively engaged in business as a bank. Recently-enacted legislation requires a bank, or a separately identifiable department or division of a bank, that advises a registered investment company to register with us as an investment adviser. *See* section 217 of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102 (1999).

[80] Item 12 of Part I of Form ADV currently requires an adviser to provide this information to us for certain control individuals, and to a ''jurisdiction'' (*i.e.*, a state securities authority) for all individuals giving investment advice in that jurisdiction. *See* Investment Advisers Act Release No. 991, *supra* note 42 at n.5.

[81] *See* discussion of Part 2 *infra* at Section II.D.2. of this Release.

[82] Proposed Item 11 of Part 1A.

[83] We have substantively amended Form BD several times over the years. When we proposed amendments to Form BD in 1991, we noted that we were considering proposing similar amendments to Form ADV. *See* Amendments to Form BD, Securities Exchange Act Release No. 29643 (Sept. 3, 1991) (56 FR 44029 (Sept. 6, 1991)).

[84] There will remain, however, differences in the scope of disciplinary reporting between advisers and broker-dealers. Form ADV would continue to require advisers to disclose information about the disciplinary record of the adviser and its ''advisory affiliates.'' The term ''advisory affiliate'' would continue to be defined to include persons who control or are controlled by the adviser. *See* Item 11 of Part I of Form ADV and proposed Item 11 of Part 1A. Form BD requires broker-dealers to disclose disciplinary information about the broker-dealer and its ''control affiliates.'' While the term ''control affiliate'' is defined to include persons who control or are controlled by the broker-dealer, it also includes persons under common control with the broker-dealer. *See* Explanation of Terms, Form BD at page 2. This difference results from differences between the Advisers Act and the Exchange Act, under which broker-dealers are regulated. *Compare* Section 202(a)(17) of the Advisers Act (15 U.S.C. 80b–2(a)(17)) (defining ''person associated with an investment adviser'') and Section 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)) (defining ''person associated with broker'').

Another difference between the two terms is that ''advisory affiliate'' includes all non-clerical employees while ''control affiliate'' includes only those employees who perform executive duties or have senior policy making authority. Since the disciplinary history of registered representatives of broker-dealers is submitted to NASDR on Form U–4, we previously concluded that it is only necessary for us to require broker-dealers to file on Form BD disciplinary information about broker-dealer employees in ''control-type'' positions. *See* Requests for Comments on Proposed Amendments to Broker-Dealer Successor Rules, Securities Exchange Act Release No. 21981 (Apr. 26, 1985) (50 FR 19196 (May 7, 1985)).

[85] In completing Form ADV's disciplinary questions on the IARD, an adviser that is registered as a broker-dealer will be presented with a list of all disciplinary events reported on Disciplinary Reporting Pages (DRPs) to its Form BD. The adviser will indicate which of its Form BD DRPs should be included on its Form ADV. These linked DRPs will be incorporated into the adviser's Form ADV. If the adviser subsequently amends its Form BD and modifies any information in a linked DRP, the IARD will alert the adviser that it must either accept the change for its Form ADV or reject the change and unlink the DRP from its Form BD. If the adviser unlinks a DRP, it must maintain separately the Form ADV DRP and the Form BD DRP.

[86] We first replaced Form BD's single DRP with six customized DRPs in 1996. *See* Form BD Amendments, Securities Exchange Act Release No. 37431 (July 12, 1996) (61 FR 37357 (July 18, 1996)). We recently amended Form BD's DRPs for electronic filing in 1999. *See* Securities Exchange Act Release No. 41594, *supra* note 3. The three Form BD DRPs that we are not proposing to include with Part 1A of Form ADV relate to disciplinary questions that we are not proposing to ask in Part 1A. The state securities authorities have included two of these questions (Items 2.C. and 2.D. of Part 1B) and a requirement for two corresponding DRPs (bond and judgment/lien) in proposed Part 1B. We recently amended Form BD's DRPs for electronic filing in 1999. *See* Securities Exchange Act Release No. 41594, *supra* note 3.

[87] Item 11 of Part I currently requires an adviser, for a ''yes'' answer to one of the disciplinary questions, to describe the action on Schedule E (if the action involved a partnership, corporation or other organization) or Schedule D (if the action involved an individual). Specifically, the adviser must provide the names of the individuals or organizations involved, the title and date of the action, the court or body taking the action, and a description of the action. The information advisers provide has been, in many cases, vague and imprecise. Use of the DRPs has elicited better information from broker-dealers.

[88] This ten-year limit would apply only to disciplinary information required by proposed Item 11 of Part 1A. *See* proposed Item 11 of Part 1A. Advisers may be required to include disciplinary events that occurred more than ten years ago in their brochure and brochure supplements. *See* discussion of Part 2A *infra* at Section II.D.2.a. of this Release. At the request of NASAA, state-registered advisers would continue to be required to report events more than ten years old in response to some questions. Each of the three DRPs we are proposing contain the following item: ''This DRP should be removed from the ADV record because the event occurred more than ten years ago.'' Checking this item would result in the DRP being removed from the current information about the adviser. All such DRPs, however, would be retained in the IARD.

[89] The reporting periods for the current items generally reflect our authority to deny or revoke the registration of an adviser. *See* section 203(e) (15 U.S.C. 80b–3(e)).

[90] *See* section 203(e)(2) and (3) (15 U.S.C. 80b–3(e)(2) and (3)).

[91] *See* section 305 of NSMIA (expanding to all felonies our authority to take action against an adviser, while retaining the ten year time limitation) (codified in Section 203(e)(2) and (3) of the Advisers Act).

occurring more than ten years ago, we typically do not use that authority.[92] Over the years, however, we have received many complaints from advisers that are required to report minor disciplinary events occurring decades ago, but that have no other disciplinary events.[93]

• Would not report an unsatisfied judgment or lien; bankruptcy; or bond denial, payout, or revocation.[94] These disclosures generally are not relevant to our authority to grant or deny registration. An adviser also would not report a finding by a self-regulatory organization that the adviser violated a rule designated as ''minor'' under a plan approved by the Commission if the sanction imposed consists of a fine of $2,500 or less and the sanctioned person does not contest the fine.[95]

• Would be required to report actions of foreign courts and regulatory authorities,[96] and cease-and-desist orders issued by the Commission.[97] Advisers also would be required to report felony criminal indictments and informations, and misdemeanor informations involving certain offenses,[98] as well as report military court convictions, misdemeanor perjury convictions, and conspiracy to commit certain offenses.[99]

• Could omit disciplinary information for advisory affiliates no longer associated with the adviser.[100]

iv. *Control Person Disclosure.* We are proposing revisions to the requirements for identifying persons who own or control the investment adviser. These changes, which are reflected in proposed Schedules A, B, and C, conform to the corresponding schedules of Form BD.[101] They should clarify and simplify the reporting of indirect interests in the adviser when, for example, the adviser is part of a large corporate structure. An adviser generally would no longer be required to report an indirect owner unless the indirect owner owned twenty-five percent of a direct owner.[102] Similarly, the instructions to these schedules clarify the requirements for imputing beneficial ownership of an adviser for reporting purposes.[103]

v. *Small Businesses.* We are proposing to add a new Item 12 that would request information we need to determine whether the adviser is a small business. We are required by the Regulatory Flexibility Act to consider the effects of our regulations on small businesses and need to know how many advisers registered with us are small businesses.[104] Generally, only those SEC-registered advisers with assets under management of less than $25 million would be required to respond to this item.[105]

b. Part 1B

Part 1B of Form ADV has been prepared by NASAA on behalf of the

[92] In response to amendments we proposed to Form BD in 1992, a commenter suggested that we limit all of Form BD's disciplinary questions to ten years. At that time, we noted that Form BD also is used by the state securities authorities and the self-regulatory organizations, which require the disclosure of disciplinary information dating beyond ten years. We therefore decided not to limit the disciplinary reporting obligation in Form BD. *See* Adoption of Form Amendments, Securities Exchange Act Release No. 30958 (July 27, 1992) (57 FR 34028 (July 31, 1992)) at n.13.

[93] These advisers have pointed out that had they committed a more serious infraction and been convicted by a court of a crime, Form ADV would not require any reporting.

[94] This information is currently required by Items 11.H., 11.I., 11.J., and 11.K. of Part I. These reporting requirements were originally included in the form to ''accommodate the regulatory interests of the (states).'' Investment Advisers Act Release No. 991, *supra* note 42 at II.C. We are proposing to amend Part 2 of the form to require advisers (and supervised persons) to disclose to their clients whether they have been the subject of a bankruptcy petition during the past ten years and whether the adviser is in a precarious financial condition. *See* proposed Items 18.B. and 18.C. of Part 2A, and proposed Item 7 of Part 2B.

[95] *See* Securities Exchange Act Release No. 30958 (making a similar change to Form BD), *supra* note 92.

[96] *See* proposed Items 11.A., 11.B., and 11.D. of Part 1A . The International Securities Enforcement Cooperation Act of 1990 (Pub. L. No. 101–550, 104 Stat. 2713 (Nov. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b–2(a) and 80b–3)) gave us explicit authority to bar, suspend, or restrict the activities of advisers based on the findings of a foreign court or foreign securities authority. The Exchange Act was similarly amended (codified at 15 U.S.C. 78c(a) and 78o(b)), and Form BD contains substantively similar disclosure requirements. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at n.11.

[97] *See* proposed Item 11.C(5) of Part 1A. The Securities Enforcement Remedies and Penny Stock Reform Act (Pub. L. No. 101–429, 104 Stat. 931 (Oct. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b–3 and 80b–9)) (Remedies Act of 1990) gave us authority to seek civil monetary penalties in court proceedings and to impose monetary penalties and order disgorgement in administrative proceedings. The Remedies Act also provided us with both temporary and permanent cease-and-desist authority to prevent violations of the securities laws. The Exchange Act was similarly amended (codified at 15 U.S.C. 78u–2 and 78u–3), and Form BD contains substantively similar reporting requirements. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at n.12.

[98] These additional reporting requirements result from our proposed definition of the term ''proceeding,'' which we have incorporated from Form BD. *See* Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 31398 (Nov. 4, 1992) (57 FR 53261 (Nov. 9, 1992)). We also are proposing to incorporate from Form BD definitions of the following terms: ''charged,'' ''felony,'' ''misdemeanor,'' ''found,'' ''enjoined,'' and ''minor rule violation.'' *See* Securities Exchange Act Release No. 37431, *supra* note 86. *See* also Glossary of Terms included in Appendix A of this Release.

[99] These changes further conform Form ADV's disciplinary questions to those of Form BD. *See* Form BD Amendments, Securities Exchange Act Release No. 35224 (Jan. 12, 1995) (60 FR 4040 (Jan. 19, 1995)) (proposing), and Form BD Amendments, Securities Exchange Act Release No. 37431, *supra* note 86 (adopting). Similarly, proposed Item 4, asking whether the adviser is succeeding to the business of a registered investment adviser, would conform to Form BD Item 5. *See* Adoption of Revised Form BD and Revised Form BDW, Securities Exchange Act Release No. 20406 (Nov. 22, 1983) (48 FR 54436 (Dec. 2, 1983)).

[100] Form ADV currently provides no easy way for an adviser to indicate that a person for whom the adviser has submitted a Schedule D reporting a disciplinary event is no longer employed by the adviser. Each of the three DRPs we are proposing contains the following item: ''This DRP should be removed from the ADV record because the advisory affiliate(s) is no longer associated with the adviser.'' Checking this item would result in the DRP being removed from the current information about the adviser and thus not available through the public disclosure system. All such DRPs, however, would be retained in the IARD and would be available to regulators.

[101] These schedules to Form BD were adopted in 1992. *See* Securities Exchange Act Release No. 30958, *supra* note 92. As part of its initial application for registration, an adviser would list its direct owners and executive officers on Schedule A, and if an adviser had indirect owners, these owners would be listed on Schedule B. An adviser with a continuing hardship exemption would use Schedule C to amend the information it filed on Schedules A and B. Advisers will not ''complete'' Schedule C when filing through the IARD; they will simply make changes on Schedules A and B. Similar to the way the Form BD DRPs submitted by an adviser that also is broker-dealer can be linked to the adviser's Form ADV, the Schedules A and B for such an adviser would be linked. Because the definition of control is the same for Form BD and Form ADV, however, the information submitted in Schedules A and B by an adviser that is a registered broker-dealer must be the same. IARD therefore will require an adviser that is a registered broker-dealer, in completing its Form ADV on the IARD, to acknowledge and accept every change it makes to its Schedules A and B of Form BD.

[102] For purposes of Schedule B, the 25% ownership interest is determined based on the form of organization. For a corporation, ownership is based on whether the indirect owner owns 25% or more of a class of voting securities. For a partnership or limited liability company, ownership is based on whether the indirect owner has the right to receive upon dissolution, or has contributed, 25% or more of the partnership's or limited liability company's capital.

In proposing that advisers report only 25% owners of a direct owner, we have attempted to strike a balance between our need to know who controls an adviser and the burden on advisers to collect information about indirect owners. We recognize that it is often difficult for foreign-owned advisers, for example, to obtain ownership information about remote interests. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1 (describing difficulties for foreign-owned broker-dealers to obtain ownership information). An adviser, however, would be required by proposed Item 10 of Part 1A to identify an indirect owner who owns less than 25% of a direct owner but nonetheless can influence the management or policies of the adviser. *Cf.* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1(b) (adopting similar reporting requirements for Form BD).

[103] *See* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1(a).

[104] 5 U.S.C. 603.

[105] *See* discussion of rule 0–7, *supra* note 61 (definition of ''small business'' or ''small entity'' for purposes of the Advisers Act).

state securities authorities. It would require state-registered advisers to provide information about bonding, arbitration actions, other civil and regulatory actions, and whether sole proprietors have taken certain qualifying exams or attained various professional designations. Most of this information is currently required by the state securities authorities.

Only state-registered advisers will be required to complete Part 1B.[106] Completion of this part of the form, therefore, is not an SEC requirement, and Part 1B is not included in this Release as a proposed SEC rule. We will accept any comments and forward them to NASAA for consideration by the state securities authorities.[107]

2. Part 2

Currently, Part II of Form ADV contains the requirements for the disclosure statement that advisers must provide to prospective clients and offer to clients annually. The disclosure statement contains information about the adviser's fees, business practices, and conflicts of interest. Advisers are required to provide clients either a copy of Part II or a narrative brochure that contains at least the information required in Part II.[108] Most advisers provide clients with Part II, which asks a series of multiple-choice and fill-in-the-blank questions supplemented in some cases by narrative schedules.

Our experience over the 15 years since Uniform Form ADV was adopted has convinced us that we need a better approach to client disclosure. First, the format of Part II does not lend itself to meaningful, clear disclosure. In some cases, an adviser's response to a question may be accurate but paint an inaccurate picture of its practices. For example, an adviser may truthfully respond to current Item 4.C. by indicating it uses all of the strategies listed by the item, but a client may not appreciate that the adviser's principal strategy involves, for example, risky options trading. In other cases, clients must draw inferences from an adviser having checked a box. For example, if an adviser is paid through commissions on securities that it advises clients to purchase or sell, a checked box in current Item 1.C. will disclose this practice, but not the conflict of interest the adviser has as a result. Advisers can use Part II's narrative schedules to expand on a check-the-box answer, but the schedules are physically separate from the checked box and are often written in legalese or technical jargon.

Second, because the information in Part II concerns the advisory *firm*, clients may not receive information they want and need about the firm's employees with whom they have contact and on whom they rely for investment advice. In the case of smaller firms, the current disclosure requirements, which focus on the senior executives of the advisory firm, may be adequate.[109] But in a growing number of large advisory firms, clients may never meet the firm's senior executives, who may be located in a different city and may have only an indirect effect on the advice given to the client. We believe clients of these firms may be more interested in the background and qualifications of the individuals with whom they are dealing than in the background and qualifications of executive officers.

We propose to address these concerns (and others, described below) by extensively revising the format of advisers' disclosure requirements. Under the proposed rules, each adviser would be required to give clients a narrative brochure written in plain English.[110] Items in Part 2 would specify the disclosure required in the brochure, but advisers would be generally free to structure the disclosure and order the topics in a manner that best conveys the required information. Our model is Schedule H to Form ADV, which currently requires wrap fee program sponsors to give clients a narrative brochure describing the wrap program.[111] Our experience with the wrap fee brochure suggests that narrative firm brochures will provide advisers' clients with better, more understandable disclosure.

The new adviser brochures would be organized in two parts, a firm brochure and a brochure supplement for each individual who provides advisory services to clients on the adviser's behalf. As described in more detail below, advisers would be required to deliver a brochure to each client, and would be required to deliver an individual's supplement only to those clients to whom that individual will provide advisory services. Part 2A would contain the requirements for the firm brochure, and Part 2B for the brochure supplements.

a. Part 2A: The Firm Brochure

Each adviser registered with us would be required to deliver its brochure at the start of the advisory relationship,[112] and to offer to deliver the brochure annually.[113] Advisers would be required to use their new brochures and brochure supplements to meet these delivery requirements by the end of the first ''roll out'' phase of the IARD.[114] To allow advisers to make a smooth transition, we are proposing a further 30-day transition period to allow advisers to provide the new brochures and supplements to existing advisory clients.[115]

The proposed delivery requirements would be very similar to the current ones, with two differences of note.[116] First, we propose to clarify that an adviser acting as the general partner for a limited partnership must provide a brochure to each limited partner.[117]

[106] State-registered advisers would be required by state rather than federal law to complete Part 1B. *See* proposed General Instruction 2 to Form ADV.

[107] We request that you clearly indicate in your comment letter which of your comments relate to Part 1B.

[108] Rule 204–3(a) (17 CFR 275.204–3(a)).

[109] Items 5 and 6 of current Part II.

[110] *See* proposed General Instructions 1 and 2 to Part 2 of Form ADV.

[111] Schedule H to Form ADV; rule 204–3(f)(1) (17 CFR 275.204–3(f)(1)).

[112] The adviser would be required to deliver the brochure before or at the time it enters into an advisory agreement with the client. Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A. Our proposed rule and the proposed instructions would clarify that the brochure must be delivered whether the advisory agreement is oral or in writing. For a discussion of proposed supplement delivery requirements, *see infra* text accompanying notes 212–215.

[113] Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A. Advisers would not be required to deliver or offer a brochure to a client that is a registered investment company or to a client who receives only impersonal advisory services costing less than $500 per year. These exceptions are contained in current rule 204–3(c)(2) (17 CFR 275.204–3(c)(2)), except that the dollar amount threshold would increase from $200 to $500 to reflect the effects of inflation since the rule was adopted in 1979. *See* Investment Adviser Requirements Concerning Disclosure, Recordkeeping, Applications for Registration and Annual Filings, Investment Advisers Act Release No. 664 (Jan. 30, 1979) (44 FR 7870 (Feb. 7, 1979)).

[114] *See* proposed rule 204–3(i)(1); *see also supra* text accompanying notes 29–31.

[115] *See* proposed rule 204–3(i)(2).

[116] Currently, rule 204–3 requires an adviser to deliver the brochure at least 48 hours before entering into the advisory agreement, *or* at the time of entering into the agreement if the client has the right to terminate the agreement without penalty within five business days thereafter. We are proposing to simply require that the adviser deliver the brochure before or at the time of entering into the agreement. It is our view that an advisory client has a right at any time to terminate the advisory relationship and receive a refund of any prepaid advisory fees that the adviser has not yet earned. *See* Jason Baker Tuttle, Sr., Initial Decision Release No. 13 (Jan. 8, 1990) (adviser failed to refund prepaid fees to clients); *see also* Monitored Assets Corp., Investment Advisers Act Release No. 1195 (Aug. 28, 1989) (advisers that refunded prepaid advisory fees only to certain clients violated anti-fraud provisions of the Act).

[117] Proposed Instruction 3 to Part 2A. We understand that some advisers have taken the position that the partnership is the ''client'' and thus the adviser need only deliver the brochure to the general partner, *i.e.*, itself. This position results, for all practical purposes, in the delivery of no brochure, and is inconsistent with the remedial

Second, we propose to require that updates to the brochure be delivered to clients whenever information in the brochure becomes materially inaccurate.[118] Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's annual offer.[119] The anti-fraud provisions of the Act require, however, an adviser to fully disclose information about all material conflicts, which require the adviser to correct previous disclosure about conflicts to clients.[120]

We believe it is incumbent upon an adviser, as a fiduciary, to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure. Mutual fund shareholders are not required to rely on information in stale prospectuses; we see no reason why advisory clients should rely on stale brochures. Therefore, we are proposing to require that an adviser provide clients with written brochure updates whenever information in the brochure becomes materially incorrect, and include these updates with brochures delivered to prospective clients.[121] These updates can take the form of either a reprinted brochure or a ''sticker,'' a piece of paper identifying the stale information and providing the current information.[122] Advisers that deliver their brochure to clients electronically could also deliver stickers electronically.[123]

As proposed, advisers could use stickers to update a firm brochure in the same way that sponsors of wrap fee programs currently use stickers to update their narrative wrap fee program brochures.[124] Generally, an adviser could use a sticker for any amendment(s) so long as the brochure remains readable and clear. We would, however, require the adviser to revise (and reprint) its brochure each year as part of its annual updating amendment. Thus, the current brochure that the adviser offers clients annually would be a ''clean'' document that incorporates the text from all existing stickers. We request comment on this proposal. How many stickers would advisers expect to accumulate over one year? How many changes would those stickers effect, and how complex would they be? Would clients be confused if advisers were required to reprint their brochures only every two or three years, rather than every year?

The information required in a firm brochure would be specified by Part 2A of Form ADV.[125] Part 2A would consist of 19 separate items, each of which elicits required disclosure on a distinct topic.[126] We have drawn the items in Part 2A largely from current Part II, redrafting them as necessary to reflect the narrative format of the new brochure.[127] Some Part 2A items are new, or have been revised to reflect new concerns or developments in the investment adviser industry. Much of the information required in the proposed narrative brochure concerns an adviser's conflicts of interest with its clients, and is disclosure the adviser already must make to clients, as a fiduciary, under the anti-fraud provisions of the Advisers Act.[128] Thus, many of the proposed disclosure items will serve to give advisers guidance on fulfilling their statutory disclosure obligations to clients.

The items in proposed Part 2A will not, of course, cover every possible conflict. As a result, delivering a brochure (and supplements) prepared in accordance with Part 2 may not fully satisfy an adviser's disclosure obligations. We make this point clear in both the proposed Form and brochure

purposes of the rule. The position is, we understand, based on provisions in rule 203(b)(3)–1(a)(2) (17 CFR 275.203(b)(3)–1(a)(2)), which permit an adviser to treat a partnership as a single client under certain conditions. However, that rule is limited by its terms to counting clients for determining eligibility for the ''small adviser exception'' to the registration requirements. See section 203(b)(3) (15 U.S.C. 80b–3(b)(3)) and Investment Advisers Act Release No. 1633, *supra* note 40 at section II.G. (''rule 203(b)(3)–1 * * * define(s) the term 'client' only for purposes of counting clients under section 203(b)(3) * * * (p)ersons that are grouped together for purposes of (this) section may be required to be treated as separate clients for other purposes under the Advisers Act * * *''). We note the application of the anti-fraud provisions of the Advisers Act to limited partners. *See Abrahamson* v. *Fleschner*, 568 F.2d 862 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978).

[118] *See* proposed rule 204–3(f).

[119] The annual offer, and delivery if the client accepts the offer, is required under current rules 204–3(c)(1) and (4).

[120] We have taken enforcement action against advisers under the anti-fraud provisions of the Advisers Act for failing to disclose new conflicts of interest. *See, e.g.,* Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997) (adviser failed to inform clients that it had begun paying for non-research expenses with soft dollar credits).

[121] As discussed below, advisers would be permitted to use a correction slip or ''sticker'' to update their brochure if they preferred not to revise the brochure itself. Advisers choosing to update using a sticker could deliver just the sticker to existing clients; advisers choosing to revise the brochure would be required to provide the revised brochure to existing clients in order to notify them of the updated information.

[122] *See* proposed Instruction 8 to Part 2A. The adviser's choice between reprinting the brochure and using a sticker would apply only to the brochure that the adviser distributes to clients and maintains in its files under our recordkeeping rules. Once the IARD accepts electronic filings of Part 2A, an adviser amending its brochure would be required to refile a revised brochure through the IARD, regardless of whether the adviser has chosen to give clients a sticker or a reprinted brochure. Thus, members of the public viewing the brochure on-line would have access to current information about the adviser.

[123] We have published interpretive guidelines for advisers' delivery of disclosure through electronic media. *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Investment Advisers Act Release No. 1562 (May 9 1996) (61 FR 24644 (May 15, 1996)) (available at <www.sec.gov/rules/concept/33–7288.txt> (last visited Mar. 15, 2000)). Our proposed instructions to Part 2 remind advisers of this option, and provide this website address.

[124] *See* current Schedule H to Form ADV.

[125] Advisers would be permitted to include non-required information in their brochures, provided it does not obscure required information. For example, an adviser could elect to include in its brochure the annual privacy notice required under section 504 of the Gramm-Leach-Bliley Act. P.L. No. 106–102, 113 Stat. 1338 (1999). The Gramm-Leach-Bliley Act, which was signed into law last November, requires investment advisers (among other financial service providers) in certain circumstances to provide initial and annual privacy notices to individuals. The notices must state (i) the adviser's policies and practices regarding its disclosure of nonpublic personal information to other parties, and (ii) how individuals can ''opt-out,'' that is, prevent the adviser from disclosing their information to nonaffiliated third parties. The Commission proposed rules implementing these privacy notice requirements on March 2, 2000. See Privacy of Consumer Financial Information (Regulation S–P), Investment Advisers Act Release No. 1856 (Mar. 2, 2000) [65 FR 12354 (Mar. 8, 2000)]. Advisers that use their brochure to transmit their annual privacy notice would, of course, need to deliver, not merely offer, the brochure each year.

[126] Proposed Part 2A has a main body and an appendix, Appendix 1. Appendix 1 contains the requirements for a specialized type of firm brochure—a wrap fee program brochure. As discussed below, Appendix 1 would require disclosure similar to that required by current Schedule H. In the main body of Part 2A, an additional item, Item 20, sets out additional disclosure that state securities authorities will require of advisers registered with them. Advisers registered only with us would be required to respond only to Items 1 through 19. Item 20 of Part 2A would be a state, rather than an SEC, requirement and therefore we are not requesting comment on it. We will, however, pass on to NASAA any comments we receive on Item 20.

[127] In addition, we propose to move other disclosure requirements from current Part II into new Part 2B, for the brochure supplement, and to delete some current Part II items we believe are no longer necessary. We have redrafted the instructions to Part 2 to make them easier to understand and to clarify advisers' obligations under the Advisers Act. The proposed instructions remind advisers that they are fiduciaries and have an obligation to make full and fair disclosure of all material conflicts with clients. The instructions require advisers to use plain English principles in drafting their brochures, provide guidance on preparing different brochures for different clients, explain the special rules for preparing wrap fee brochures, and explain how advisers without an operating history should respond to items. The instructions also explain the brochure rule's delivery requirements, explain brochure updating requirements, remind advisers that under certain conditions they can deliver the brochure electronically, and explain our filing requirements.

[128] Section 206 (15 U.S.C. 80b–6).

rule.[129] We request comment whether there are other common disclosures advisers make to clients that we should also include in the items of Part 2.

Item 1. Cover Page. The brochure cover page would be required to identify the advisory firm, its business address, and telephone number; the date of the brochure; and the name of a person who can be contacted for further information. The cover page would also include a statement that the brochure has not been approved by the Commission or any state securities authority. If the adviser holds itself out as being ''registered,'' the cover page must also explain that registration does not imply that the adviser possesses a certain level of skill or training.[130] The cover page would also provide the address of a web site so that a client or prospective client can obtain additional information about the adviser through the IARD.

Item 2. Material Changes. The brochure would include a summary of material changes since its last annual update, to help clients identify new or revised information. The summary would appear on the cover page of the brochure or immediately thereafter, or could be included in a separate letter sent to clients accompanying the brochure.[131]

Item 3. Table of Contents. The new brochures would include a table of contents detailed enough to permit clients to locate topics easily.

Item 4. Advisory Business. Advisers would be required to include background information about the advisory firm, including how long it has been in business and the names of its principal owners. The brochure would also describe the firm's advisory business—the types of advisory services offered, whether the adviser tailors services to clients' individual needs, and whether clients may impose individual investment restrictions.[132]

We are not proposing to require all advisers to disclose the details of how they manage client assets. For many advisers, descriptions of how they formulate advice or manage client portfolios are likely to be either too generalized or too client-specific to be helpful. However, we propose to require an adviser that holds itself out as specializing in a particular service to explain its specialty in detail,[133] and to require an adviser that provides advice about only limited types of securities to explain its services and their limitations. In addition, advisers that manage assets would disclose the amount they manage with investment discretion, and the amount without. Wrap fee portfolio managers would explain any differences in their portfolio management for wrap fee and non-wrap clients, as well as identifying the wrap programs they participate in and disclosing that they receive part of the wrap fee.[134]

Item 5. Fees and Compensation. The brochure would describe how the adviser is paid for providing advisory services.[135] The adviser would be required to disclose its fee schedule, disclose whether fees are negotiable, discuss whether the firm bills clients or deducts fees directly from the clients' accounts, and explain how often the firm assesses fees. Advisers charging fees in advance would also be required to explain how they calculate and refund prepaid fees when a client contract terminates.[136]

Advisory clients may not appreciate that they will bear other costs in addition to advisory fees. Thus, in addition to information about advisory fees, we propose to require the brochure to describe the types and amounts (or ranges) of other costs, such as brokerage, custody fees, and fund expenses, that clients may pay in connection with advisory services.

In some cases, the type of compensation an adviser receives will involve a conflict of interest. An adviser that receives commissions or other payments for sales of securities to clients (transaction-based compensation) has a serious conflict of interest with its clients.[137] This practice gives the adviser and its personnel an incentive to base investment recommendations on the amount of compensation they will receive rather than on the client's best interests.[138] We propose to require advisers who receive transaction-based compensation (or whose personnel receive transaction-based compensation) to disclose this practice and the conflict of interest, and to describe the firm's control procedures for addressing the conflict.[139] Item 5 would also require these advisers to disclose that clients may purchase the same securities or investment products from other brokers.[140] Should proposed Item 5 also require an adviser to discuss its conflict of interest in charging performance or incentive fees, or should

[129] *See* proposed General Instruction 3 to Part 2; proposed rule 204–3(g).

[130] We have observed that the emphasis on SEC registration, in some advisers' marketing materials, appears to suggest that registration either carries some official imprimatur or indicates that the adviser has attained a particular level of skill or ability. Section 208(a) of the Advisers Act (15 U.S.C. 80b–8(a)) makes such suggestions unlawful. *See, e.g.*, Money Machine, Investment Advisers Act Release No. 783 (Nov. 12, 1981) (adviser violated section 208(a) by representing or implying that the Commission had passed upon the adviser's abilities and qualifications); Advanced Analysis, Inc., Investment Advisers Act Release No. 397 (Jan. 18, 1974) (adviser violated section 208(a) by representing that the Commission had passed upon the adviser's qualifications and methods of security analysis).

[131] An adviser including the summary in a separate letter to clients would not be required to file the letter with us, but a proposed amendment to our recordkeeping rule would require the adviser to preserve a copy. *See* proposed rule 204(a)(14)(i).

[132] Proposed Item 4, together with proposed Item 7, incorporate requirements of current Item 3 of Part II. Proposed Item 4 also incorporates requirements of current Items 1.A. and 1.D. of Part II.

[133] In response to proposed Item 7, advisers offering specialized services would also be required to disclose any specific risks their specialty involves. *See* discussion of proposed Item 7, *infra*, text accompanying notes 143–144.

[134] Proposed Item 4.F. Item 4.F. would apply only to advisers that *manage portfolios* in wrap fee programs; these advisers would provide wrap fee clients with their regular firm brochure. Advisers that *sponsor* wrap fee programs would prepare a separate ''wrap fee brochure'' for their wrap fee clients in compliance with Part 2A Appendix 1. *See infra* text accompanying note 202.

[135] Proposed Item 5 incorporates requirements of current Items 1.C., 1.D., and 9.B. of Part II.

[136] Advisers must refund prepaid unearned advisory fees to clients when the advisory relationship terminates. *See, e.g.*, Jason Baker Tuttle, Sr., *supra* note 116.

[137] A congressional committee has characterized the practice of an adviser receiving transaction-based compensation as ''(o)ne of the most serious and frequent conflicts of interest that advisers have with clients.'' H.R. Rep. No. 75, 103d Cong., 1st Sess. 19 (1993).

[138] Because of this conflict, advisers are required by the anti-fraud provisions of the Advisers Act to disclose their receipt of such compensation to clients. We have brought enforcement actions against advisers who failed to make such disclosures. *See* Carona & Hodges Management, Inc., and James G. Carona, Investment Advisers Act Release No. 1403 (Feb. 8, 1994) (adviser invested client assets in risky, developmental-stage companies without disclosing that the adviser received loan fees from those companies for doing so); Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 17, 1988) (adviser and principal failed to state that they would receive commissions on certain securities they recommended to clients); and John S. Lalonde, Investment Advisers Act Release No. 1103 (Jan. 25, 1988) (adviser failed to disclose commissions received on sales of limited partnership interests).

[139] As discussed below, advisers may engage in practices that must be disclosed under both proposed Item 5 and proposed Item 10.A., which would require disclosure when the adviser has a financial interest in securities that it recommends to clients, or under both proposed Item 5 and proposed Item 13, which would require disclosure when the adviser receives an economic benefit from a non-client. A brochure would not need to repeat information simply because the information is responsive to more than one item.

[140] *E.g.*, Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 16, 1988) (adviser failed to disclose that clients could purchase securities from other broker-dealer). In addition, an adviser that receives more than 50% of its revenue from commissions and other sales-based compensation would explain that commissions are the firm's primary (or, if applicable, exclusive) form of compensation, and an adviser that charges *both* advisory fees and commissions would disclose whether it reduces its fees to offset the commissions.

we continue to rely on anti-fraud provisions to require disclosure when this type of fee structure presents a material conflict? [141]

Item 6. Types of Clients. The brochure would describe the types of advisory clients the firm generally has. The adviser would also disclose its requirements, such as minimum account size, for opening or maintaining an account.[142]

Item 7. Methods of Analysis, Investment Strategies and Risk of Loss. Item 7 would require the brochure to describe the adviser's methods of analysis and investment strategies. As noted earlier, Item 4 of Part II currently asks for the adviser's methods of analysis, sources of information, and investment strategies through a series of check boxes. The current format necessarily covers a limited number of analytical methods and strategies. Moreover, clients may not appreciate the meaning of the methods listed, or may not understand the implications for how client accounts are actually managed using a particular method.[143] We believe that an adviser's narrative description will provide clients with more useful information.

We are also proposing that the brochure discuss the risks clients face in following the adviser's advice or permitting the adviser to manage assets. Advisers that offer a wide variety of advisory services could simply explain that investing in securities involves a risk of loss; we would not require these advisers to list the risks involved in each type of security or trading strategy. Advisers that use primarily a particular method of analysis, strategy, or type of security would be required to explain the specific risks involved,[144] with more detail if those risks are significant or unusual.

Item 8. Disciplinary Information. We propose to require an adviser's brochure to disclose information about the firm's disciplinary history. This disclosure would include descriptions of, among other events, any convictions for theft, fraud, bribery, perjury, forgery and violations of securities laws by the adviser or one of its executives. Disciplinary events such as these reflect on the integrity of the adviser and its management persons. Thus, disclosure of this information is material to clients.

Although we have long viewed the anti-fraud provisions of the Advisers Act as requiring advisers to disclose disciplinary information,[145] we have not required this disclosure to be included in Part II of Form ADV or the client brochure.[146] One of our anti-fraud rules, rule 206(4)–4, requires advisers to inform clients and prospective clients promptly about any ''legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.'' [147] The rule provides a list of events that are presumed to be material if they occurred in the previous ten years.[148] The adviser may (but is not required to) make this disclosure in its brochure, and may make it orally.

Information about an adviser's illegal or unethical conduct is very important to a client who is deciding whether to engage or continue to engage the adviser. When assessing whether an adviser will fulfill its obligations to clients, an investor would likely give great weight to whether the adviser has met its fiduciary and other legal obligations in the past. Because of the importance of this information to clients, we are proposing to require it be in writing and included in the brochure along with other material information about the adviser.[149] A writing requirement will also permit us to better monitor compliance with this disclosure requirement.[150] We request comment on this proposal, specifically whether disciplinary information should appear in a separate written document accompanying the brochure, rather than the brochure itself, in order to highlight its importance to advisory clients. We also request comment whether there are other approaches to achieve these same disclosure and compliance objectives.

We have modeled proposed Item 8 on rule 206(4)–4, which we propose to rescind. Item 8 would require an adviser's brochure to disclose all material facts about any legal or disciplinary event material to evaluating the adviser's business or the integrity of its management. An adviser must *presume* that certain disciplinary events described in Item 8 are material if the event involved the adviser or a management person and occurred in the previous ten years.[151] The adviser may overcome (rebut) this presumption, in which case no disclosure is required. A note in Item 8 would explain four factors the adviser should consider when assessing whether the presumption can be rebutted.[152] We

[141] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) (63 FR 39022 (July 21, 1998)).

[142] Proposed Item 6 incorporates requirements of current Items 2 and 10 of Part II.

[143] *See* current Item 4 of Part II. Proposed Item 7 also incorporates requirements of current Item 3 of Part II.

[144] Advisers whose primary strategy involves frequent trading would have to explain how the strategy may affect performance, due to higher transaction costs and taxes.

[145] *See, e.g.*, Jesse Rosenblum, Investment Advisers Act Release No. 913 (May 17, 1984) (adviser who failed to tell prospective clients about an injunction obtained against the adviser by state securities authority ''omitted a material fact that was essential to an evaluation of his qualifications as an investment adviser * * * (and that) investors surely would have wanted to know (about the injunction) before entrusting their funds to (the adviser's) management'').

[146] When we proposed Uniform Form ADV in 1985, we considered requiring advisers' brochures to contain substantially the same disciplinary information advisers must report to us, which includes disciplinary information not only about the adviser and its management persons but also about its advisory personnel. Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 967 (Apr. 24, 1985) (50 FR 18500 (May 1, 1985)). When we adopted Uniform Form ADV later in 1985, we excluded this requirement because of concerns that, in some cases, the information could be voluminous. Investment Advisers Act Release No. 991, *supra* note 42. Under the current proposal, as discussed above, the disciplinary information in the firm's brochure would be limited to information about the firm and its management persons and, as discussed below, would be similar to that currently presumed to be material under rule 206(4)–4. Disciplinary information about advisory personnel would be included in brochure supplements. *See* discussion of proposed Item 3 of Part 2B, *infra* Section II.D.2.b. of this Release.

[147] Rule 206(4)–4(a)(2) (17 CFR 275.206(4)–4(a)(2)).

[148] Rule 206(4)–4(b) (17 CFR 275.206(4)–4(b)).

[149] In addition, the IARD will permit a client or prospective client to view an adviser's reports of disciplinary events in response to proposed Item 11 of Part 1A of Form ADV. However, we would not rely on the IARD to inform clients and prospective clients of disciplinary events. We believe that advisers have an affirmative obligation under the Advisers Act to disclose material disciplinary events to clients and prospective clients, and that clients and prospective clients should not bear the burden of engaging in such a search (and updating it continuously). We also note that proposed Item 8 of Part 2A and current rule 206(4)–4 both require disclosure of all material disciplinary events, which is broader than proposed Item 11 of Part 1A would require.

[150] Under rule 206(4)–4, an adviser must disclose a disciplinary event to clients ''promptly.'' As a result, including this information in the brochure (under current rules) may not satisfy rule 206(4)–4, because the brochure must only be delivered to clients at the beginning of the advisory relationship and offered annually thereafter. *See* note appended to rule 206(4)–4. Our proposed revisions to the updating requirement would resolve the differences in the delivery requirements. *See supra* Section II.D.2.a. of this Release.

[151] An adviser's ''management persons'' are anyone with the power to exercise, directly or indirectly, a controlling influence over the adviser's management or policies, or to determine the general investment advice given to the adviser's clients. *See* Glossary of Terms, definition of ''management person.''

[152] These factors are: (1) The proximity of the person involved in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. These are the same factors advisers use to determine materiality under current rule 206(4)–4. *See* Financial and Disciplinary Information that

Continued

propose to require advisers registered with us to keep a file memorandum if the adviser does not disclose an event described in Item 8. The memorandum will memorialize the adviser's determination, avoid later disagreements as to the basis for the determination, and better permit our staff to monitor compliance with this important disclosure requirement.[153]

We are proposing several revisions to the provisions in the list of disciplinary events that would move from rule 206(4)–4 into new Item 8. First, we would update some of the provisions to reflect changes in the law.[154] Second, we would make certain clarifying revisions to the listed events.[155] Finally, we would require an adviser subject to one of our administrative orders to provide clients and prospective clients with a copy of that order for a period of one year following the date of the order.[156]

Rule 206(4)–4 requires an adviser to disclose a civil action in which the adviser is found to have violated an investment-related statute.[157] Today, however, many disputes between securities firms and their customers are resolved through arbitration or other alternative dispute resolution, rather than civil lawsuits. As a result, there may now be more violations of investment-related statutes that are not presumed to be material under rule 206(4)–4 and therefore are not typically disclosed to clients. In Item 20 of Part 2A, state securities authorities have included a requirement that state-registered advisers disclose certain arbitration liability if the claim was in excess of $2,500. Should we include a similar requirement in Item 8? If so, should our requirement be limited to arbitration *awards* for $2,500 rather than *claims* for $2,500? Should the amount be higher? Since some arbitrators may not issue reports of their findings, how should we draft Item 8 to distinguish arbitrations involving matters that do not reflect upon the integrity of the adviser (such as some contract disputes), from those that do? Should we limit the requirement to arbitrations in which the arbitrator finds a violation of an investment-related statute? If we do, will advisers and their affiliates decline to agree to use arbitrators who make findings?

Item 9. Other Financial Industry Activities and Affiliations. We propose to require advisers to disclose information about their other financial industry activities and affiliations. These other activities and affiliations may create conflicts of interest between the advisory firm and its clients, and may impair the objectivity of the investment advice given.

Proposed Item 9 would require an adviser to disclose whether it (or any of its management persons) is registered or has applied to register as a broker or commodities professional. The brochure would also describe material arrangements the adviser (or any of its management persons) has with related financial industry participants. Advisers must currently provide similar disclosure under Item 8 of Part II. The brochure would also describe any material conflict of interest with advisory clients that the relationship or arrangement creates with clients, and the restrictions or other control procedures the adviser uses to address the conflict.[158] In addition, if the adviser selects or recommends other advisers for clients, proposed Item 9 would require disclosure of any compensation arrangements and other business relationships between the two advisory firms, as well as of the conflicts created.

Item 10. Participation or Interest in Client Transactions; Personal Trading. Item 10 would require the brochure to discuss the conflicts of interest the adviser faces when the advisory firm or a ''related person'' has a financial interest in, or trades in, securities they recommend to clients.[159] Advisers would be required to disclose any practices giving rise to these conflicts, the nature of the conflicts presented, and any procedures and controls the adviser uses to address the conflicts.[160]

Proposed Item 10 is designed to shed sunlight on two types of practices that can harm advisory clients. The first is

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Investment Advisers Must Disclose to Clients, Investment Advisers Act Release No. 1083 (Sept. 25, 1987) (52 FR 36915 (Oct. 2, 1987)).

[153] The memorandum would be required to explain the adviser's determination and to discuss the four factors set forth in Item 8. Proposed rule 204–2(a)(14)(ii). Proposed Item 3 of Part 2B requires a brochure supplement to contain disclosure of legal or disciplinary events involving the adviser's supervised persons. Proposed rule 204–2(a)(14)(ii) would require the same memorandum in the event the adviser does not disclose an event described in Item 3 of Part 2B.

[154] First, all felonies (not only those involving investment-related statutes) would be presumed material. Congress amended section 203 of the Advisers Act in 1996 to permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities, if the adviser has been convicted of *any* felony within the past ten years. Section 305 of NSMIA, *supra* note 91. Current Item 11.A. of Part I already requires advisers to report all felonies to us. Second, actions of foreign courts and financial regulatory authorities would be included. Congress's 1990 amendments to the Advisers Act permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities based on the findings of a foreign court or foreign securities authority. *See supra* note 96. Third, monetary penalties in administrative proceedings would be required to be disclosed. Congress gave us authority to impose monetary penalties in administrative proceedings in the Remedies Act of 1990. *See supra* note 97.

[155] These proposed changes clarify that: (a) A conviction for conspiracy to commit any felony or to commit any listed misdemeanor is a criminal conviction that must be disclosed; (b) a military court is a court of competent jurisdiction; and (c) an order enjoining the adviser or a management person from violating an investment-related statute, rule, or order must be disclosed. *See* proposed Item 8.A. We have also added explanatory text to the definition of ''management person.'' *See* Glossary of Terms, definition of ''management person.''

[156] This requirement would apply if the date of the order is on or after the effective date of these revisions to Form ADV. As a condition of settlement in administrative proceedings against certain investment advisers, we have required the advisers to send copies of our orders to existing clients and, for one year, to prospective clients. *E.g.*, Capital Markets Research Co., Investment Advisers Act Release No. 1834 (Sept. 27, 1999); Boston Investment Counsel, Inc., Investment Advisers Act Release No. 1801 (June 10, 1999); Valicenti Advisory Services, Inc., Investment Advisers Act Release No. 1774 (Nov. 18, 1998); Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997); Account Management Corporation, Investment Advisers Act Release No. 1529 (Sept. 29, 1995). Because our orders include findings of the facts underlying the violations, requiring that a client receive a copy of that order provides us with greater assurance that the client will be accurately informed of the adviser's behavior. The Second Circuit recently affirmed our authority to impose this form of remedy. Valicenti Advisory Services, *Inc.* v. *SEC,* No. 99–4002, 1999 U.S. App. LEXIS 35879 (Nov. 30, 1999, amended Feb. 9, 2000) (*per curiam*).

[157] Rule 206(4)–4(b)(1)(ii) (17 CFR 275.206(4)–4(b)(1)(ii)).

[158] Brochure supplements would be required to contain similar disclosure, concerning the other business activities of the adviser's supervised persons. *See* proposed Item 4 of Part 2B and the discussion below at Section II.D.2.b. of this Release.

[159] This item incorporates many of the disclosure requirements of Item 9 of Part II. An adviser's related persons are: (1) the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; (3) all of the adviser's current employees; and (4) any person providing investment advice on the adviser's behalf.

[160] Many advisers have extensive procedures in place to monitor and control employees' personal securities trades and financial interests; these procedures may include pre-clearance, restricted lists, blackout periods, or periodic reporting. Section 204A (15 U.S.C. 80b–204a) of the Advisers Act requires most advisers to establish policies and procedures to prevent misuse of material, nonpublic information, and rules 204–2(a)(12) and (13) (17 CFR 275.204–2(a)(12) and (13)) require advisers to keep records of their securities transactions and those of their ''adviser representatives.'' In addition, our rules under the Investment Company Act require advisory firms that advise registered investment companies to adopt a written ''code of ethics'' to address conflicts arising out of personal trading, and to file those codes with us. We recently revised those rules in order to provide greater protection against improper personal trading by persons who have access to information about mutual funds' purchases and sales of securities. Investment Company Release No. 23958 (adopting amendments to rule 17j–1 under the Investment Company Act (17 CFR 270.17j–1)), *supra note* 2.

when an advisory firm (or a related person) has a material financial interest in an issuer of securities it recommends to clients. For example, the adviser may recommend that clients invest in an investment company that the firm advises, or a partnership for which the firm is the general partner.[161] Similarly, the adviser may recommend that a client buy securities in a public offering underwritten by the adviser's affiliate. Or, an adviser with a material financial interest in a company may recommend that a client buy shares in that company's public offering, when the success of the offering could increase the value of the adviser's investment.[162] An adviser engaging in these practices has an incentive to base its advice on its own financial interests rather than the interests of clients, and the proposed item is designed to help a client understand the conflict. Item 10.A. would require full disclosure of these conflicts and provide guidance on the types of conflicts covered.[163] We request comment whether additional guidance would be useful to advisers.

The second practice involves personal trading abuses. Because of the information they have, advisers and their personnel can ''front run'' client trades or otherwise abuse their positions. For example, an adviser may be able to sell (or sell short) its own position in a security in advance of large client sell orders that could be expected to drive down the price of that security. Similarly, an adviser may acquire a position in a stock, advise clients to buy the same stock, and profit by the resulting increase in price.[164] These practices not only may affect the adviser's recommendations, but also can harm clients by affecting adversely the prices at which clients buy or sell securities.

Under proposed Item 10.B., an adviser would disclose whether it or a related person (*e.g.,* advisory personnel) invest—or are permitted to invest—in the same securities as their clients, or in related securities such as options or other derivatives.[165] Firms engaging in or permitting this practice would discuss the conflicts presented, and describe the firm's restrictions and/or internal procedures to address the conflicts. Item 10.C. would require a similar discussion, but focus on the specific conflicts an adviser has when it (or a related person) trades in the same securities at or about the same time as a client. In response to this item, an adviser might explain how its internal controls prevent the firm and its staff from buying or selling securities in advance of client transactions.

Item 11. Brokerage Practices. Item 11 would require the brochure to describe the adviser's policies and practices in selecting brokers for client transactions, and in determining the reasonableness of brokers' compensation. As we explain in more detail below, the item would require the adviser to disclose its policies and practices with respect to ''soft dollars,'' *i.e.,* the receipt of benefits such as research for the allocation of client brokerage.

Soft Dollar Practices. Advisers often receive ''soft dollar'' benefits from using particular brokers for client trades.[166] Client brokerage, however, is an asset of the client—not of the adviser. When, in connection with client brokerage, an adviser receives products or services that it would otherwise have to produce itself (or pay for), the adviser's interest may conflict with those of its clients. For example, soft dollar arrangements may cause an adviser to violate its best execution obligation by directing client transactions to brokers who are not able to adequately execute the transactions, or may give the adviser incentive to trade client securities more often than it would absent the benefits the adviser receives. Because of these conflicts, we have required advisers to disclose their policies and practices on use of client brokerage to obtain soft dollar benefits.[167]

During 1997–98, our staff conducted a wide-ranging examination of advisers' soft dollar practices and disclosure. Our Office of Compliance Inspections and Examinations found widespread use of soft dollars by investment advisers that manage client portfolios.[168] The Office concluded that advisers' disclosure often failed to provide sufficient information for clients or potential clients to understand the adviser's soft dollar practices and the conflicts those practices present. In its report, the Office noted that most advisers' descriptions were simply boilerplate, and urged that we consider amending Form ADV to require better disclosure.[169] Today we are acting on those recommendations.[170]

Item 11 would require an adviser that receives research or other products or services in connection with client securities transactions (soft dollar benefits) to disclose the adviser's practices and discuss the conflicts of interest that result.[171] The brochure's description of soft dollar practices must be specific enough for clients to understand the types of products or services the adviser is acquiring and permit them to evaluate conflicts.[172] Disclosure must be more detailed for products or services not used in the adviser's investment decision-making process.

Item 11 would describe the types of conflicts the adviser must disclose when it accepts soft dollar benefits,[173] and

[161] *See* Thomson McKinnon Asset Management, L.P., Investment Advisers Act Release No. 1243 (July 26, 1990) (adviser failed to disclose that it received advisory fees from a money market fund into which it ''swept'' clients' cash balances).

[162] *See, e.g.,* Chancellor Capital Management, Inc., Investment Advisers Act Release No. 1447 (Oct. 18, 1994) (adviser failed to disclose, when recommending publicly traded securities of an issuer to client, that adviser's related person owned non-publicly traded securities of the same issuer).

[163] We are proposing an exception, in Item 10.A., for advisers' investments in mutual funds that they recommend to clients. These investments typically do not raise conflicts because the securities are valued at their net asset value; however, an adviser would still be required to disclose the conflict created when it receives a *fee* from a fund it recommends to clients. *See* Example 3 of proposed Item 10.A. *See* Thomson McKinnon, *supra* note 161.

[164] *See* Roger Honour, Investment Advisers Act Release No. 1527 (Sept. 29, 1995).

[165] Some situations, such as when an adviser owns shares in a company it recommends to clients, may be covered by both proposed Items 10.A. and 10.B. Others, such as when an adviser sells its holdings of a security it purchases for clients, would come under 10.B, and potentially 10.C. A brochure would not need to repeat disclosure simply because it is responsive to more than one item.

[166] Section 28(e) of the Exchange Act (15 U.S.C. 78bb(e)) provides a limited ''safe harbor'' for advisers with discretionary authority in connection with their receipt of soft dollar benefits. *See* discussion of this safe harbor, *infra* note 176.

[167] Item 12 of current Part II.

[168] Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998) (Soft Dollar Report).

[169] *Id.* at 3, 50–51.

[170] The Office also recommended further rulemaking in this area, which we may consider in the future. Among the suggestions detailed in the Soft Dollar Report were: (a) requiring advisers to provide clients with client-specific itemizations of soft dollar benefits the adviser received during the previous period, and (b) requiring advisers to maintain certain records of soft dollar benefits received and the adviser's allocation of so-called ''mixed-use'' items between research and non-research functions. *Id.* at 49–51.

[171] The soft dollar benefits covered include any research, products or services, whether created or developed by the broker-dealer itself or by a third party. *See* note to proposed Item 11.A.1. of Part 2A.

[172] In this regard, the proposed item would incorporate the standard for advisers we set out in our 1986 interpretive release on soft dollars. Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Release No. 23170 (Apr. 23, 1986) (1986 Soft Dollar Release).

[173] An adviser accepting soft dollar benefits would have to explain that (a) the adviser benefits because it does not have to produce or pay for the research, other products, or services acquired with soft dollars, and (b) the adviser therefore has an incentive to select or recommend broker-dealers based on the adviser's interest in receiving these benefits, rather than on the client's interest in getting the best execution services at the lowest available rates.

require the adviser to disclose its procedures for directing client transactions to brokers in return for soft dollar benefits.[174] The item would require the adviser to explain whether it uses soft dollars to benefit all clients[175] or just those accounts whose brokerage ''pays'' for the benefits, and whether the adviser seeks to allocate the benefits to client accounts proportionately to the brokerage credits those accounts generate. The item would also require the adviser to explain whether it ''pays up'' for soft dollar benefits.[176]

Client Referrals. The brochure would also be required to discuss the adviser's practice in using client brokerage to reward brokers that refer clients.[177] This practice also presents advisers with serious conflicts of interest since they may have a bias towards referring brokers. The brochure would have to disclose this practice, the conflict it creates, and any procedures the adviser used to direct client brokerage to referring brokers during the last fiscal year, *i.e.,* the system of controls used by the adviser when allocating brokerage.

Transaction Costs. Clients engaging an adviser can benefit when the adviser negotiates lower commissions or ''bunches'' trades to obtain volume discounts on execution costs.[178] Item 11 would require the adviser to describe these practices. If the adviser does not bunch trades when it has the opportunity, the brochure would be required to explain that clients may pay higher brokerage costs. Similarly, if the adviser does not negotiate commissions, or limits the extent to which it negotiates them, the brochure would be required to explain that clients may pay higher brokerage costs as a result.[179]

Directed Brokerage. Clients sometimes instruct their adviser to send transactions through a specific broker. Clients may initiate this type of arrangement for a variety of reasons: the client may wish to favor a family member or friend, or the client may be using its own brokerage to pay for services the broker provides to the client.[180] But the arrangement may also be initiated by the adviser, who may benefit, for example, when brokerage is directed to its affiliated broker-dealer. In either case, clients directing (or agreeing to direct) brokerage need to understand the consequences of directing brokerage, including the possibility that their accounts will pay higher commissions and receive less favorable execution.[181]

If an adviser *permits* clients to direct brokerage, we would require the brochure to explain that the adviser may be unable to get best execution, and that directing brokerage may cost clients more money. If, however, the adviser *routinely requests or requires* clients to direct brokerage, the brochure would also be required to describe the adviser's policy or practice, to disclose that not all advisers require directed brokerage, and to discuss any broker-dealer relationship that creates a material conflict of interest.[182]

Commission Recapture.[183] An adviser that sends brokerage to a firm providing commission recapture would describe how recapture works, explain the benefits of recapture, and explain how a client could participate in recapture. We request comment on this disclosure requirement: which types of clients can generally participate in commission recapture programs, and how do clients currently learn that such programs are available?

Item 12. Review of Accounts. The brochure would disclose whether, and how often, the adviser reviews clients' accounts or financial plans, and would identify who conducts the review.[184] Advisers that review accounts, but not regularly, would explain what circumstances would trigger an account review.

Item 13. Payment for Client Referrals. The brochure would describe any payment, whether in cash or otherwise, that the adviser or a related person makes for client referrals. The brochure would also disclose whether the adviser receives any benefit, including sales awards or prizes, from a non-client for providing advisory services to clients.[185]

Item 14. Custody. Advisers that accept custody of client funds or securities would say so in their brochure and would describe any special reports they give to those clients.[186] Advisers that

[174] *See* proposed Item 11.A.1.e. of Part 2A, which is substantively the same as current Item 12.B. of Part II.

[175] Using one client's brokerage to obtain research or other products that benefit another client's account is often called ''cross-subsidization.''

[176] ''Paying up'' refers to a manager causing a client account to pay more than the lowest available commission rate. Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor for managers who pay up to obtain research from brokers. Under section 28(e), someone who exercises investment discretion over a client account has not acted unlawfully or breached a fiduciary duty *solely* by causing the account to pay more than the lowest commission rate available, so long as that person determines in good faith that the commission amount is reasonable in relation to the value of the brokerage and research services provided. The 1986 Soft Dollar Release clarified the Commission's interpretation of section 28(e). Section 28(e), however, does not speak to an adviser's disclosure obligations—advisers must disclose their receipt of soft dollar benefits to clients whether the benefits fall inside or outside of the safe harbor. *See* 1986 Soft Dollar Release, *supra* note 172.

[177] Proposed Item 11.A.2. of Part 2A. *See* Fleet Investment Advisors, Inc., Investment Advisers Act Release No. 1821 (Sept. 9, 1999) (adviser failed to disclose to clients that it directed brokerage commissions in exchange for client referrals).

[178] Broker-dealers may, for example, offer better prices, including lower commission costs, and/or better execution for larger orders. Generally, our staff has not recommended enforcement action against advisers that aggregate trade orders on behalf of clients, so long as the adviser allocates the trades in a way that treats all clients fairly. *E.g.,* Pretzel & Stouffer, SEC No-Action Letter (Dec. 1, 1995); SMC Capital Inc., SEC No-Action Letter (Sept. 5, 1995). However, advisers violate the Advisers Act's anti-fraud provisions if they fail to disclose allocation policies that disadvantage a client. *See* Account Management Corporation, *supra* note 156 (adviser failed to disclose that it allocated shares in ''hot'' initial public offerings only to limited number of eligible client accounts); *cf.* Nicholas Applegate Capital Management, Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (adviser failed to supervise senior trader who allocated profitable day trades to his own personal account rather than to client account).

[179] Proposed Item 11.B. *See* Mark Bailey & Co., Investment Advisers Act Release No. 1105 (Feb. 24, 1988) (adviser that failed to disclose that it did not negotiate commissions on directed trades, failed to disclose that the adviser would be in a better position to negotiate commissions in batched transactions for non-directed trades, and failed to inform clients that commissions might be lower on non-directed trades, violated anti-fraud provisions of Advisers Act).

[180] A client may also direct its transactions to a broker that agrees to make cash rebates to the client. As noted in the Soft Dollar Report, this directed brokerage practice is referred to as ''commission recapture.'' Soft Dollar Report, *supra* note 168 at n.42. We are proposing a separate disclosure requirement, discussed below, relating to commission recapture.

[181] 1986 Soft Dollar Release, *supra* note 172 at n.44.

[182] Proposed Item 11.A.3.b. of Part 2A.

[183] As discussed *supra* at note 180, commission recapture involves directing brokerage in exchange for cash rebates made to the client.

[184] Proposed Item 12 of Part 2A incorporates requirements currently in Item 11 of Part II.

[185] Proposed Item 13 of Part 2A incorporates requirements in current Item 13 of Part II. Proposed Item 13 would require advisers to disclose economic benefits to the firm; as discussed below, proposed Item 5 of Part 2B would require advisers to disclose economic benefits to a supervised person. *See infra* Section II.D.2.b. of this Release.

[186] Item 14 would retain the same definition of ''custody'' as now in Form ADV. *See* Glossary of Terms to proposed Form ADV and Instruction 5 to current Form ADV. Advisers have custody if, for example, they hold client funds or securities or they have the ability to appropriate client assets such as having signatory power over a client's checking account. Advisers also may be deemed to have custody of client assets because a related person of the adviser has custody of those assets. Our staff has provided guidance on the factors to be considered in determining whether an adviser in this circumstance is deemed to have custody. *See* Crocker Investment Management Corp., SEC No-Action Letter (Apr. 14, 1978) (setting out a five-factor test). *See also* Investment Advisers Act Release No. 1000 (Dec. 3, 1985) (50 FR 49835 (Dec. 5, 1985)) at question II.E.5. (whether an adviser is deemed to have custody because it is affiliated with the custodian is a factual matter based on the actual relationship between the adviser and affiliate). Part II of Form ADV does not currently require advisers to tell clients whether they accept custody. We,

require custody of client assets would also explain that most advisers do not impose this requirement.[187] The brochure would also disclose that clients face greater risk than if an independent custodian held their assets.[188]

Item 15. Investment Discretion. Advisers with discretionary authority over client accounts would be required to disclose that fact in their brochure,[189] and any limitations clients may (or customarily do) place on this authority.[190]

Item 16. Proxy Voting Policies. Item 16 would require advisers to disclose their proxy voting practices. This would be a new disclosure requirement, which we propose to add so that clients will be fully informed about who is responsible for voting their proxies and how their interests in proxy voting decisions are protected.

We propose to require advisers to state whether they vote proxies for clients.[191] Advisers that vote client proxies would disclose their voting policies, practices, and procedures.[192] These advisers would also explain whether a client can direct the vote in a proxy solicitation, and whether clients can find out how the adviser voted their securities on a given issue.[193] Advisers that do not vote client proxies would explain how clients will receive proxies (for example, directly from a transfer agent or custodian or through the adviser), and whether the client can discuss particular proxy solicitations with the adviser.

Item 17. Investment Performance. Advisers that advertise or report their investment performance would be required to describe any standards they use to calculate (or present) performance. ''Standards'' may include industry standards, but would also include any proprietary standards used solely by the adviser.[194] The brochure would also discuss whether a third party reviews the adviser's performance information for accuracy or for compliance with presentation standards.[195]

Item 18. Financial Information. We are proposing to require the brochure to include certain financial information about the adviser when material to clients. An adviser that has custody of client assets or requires prepayment of fees exposes clients to the risk that the firm may become insolvent and unable to return the assets or refund unearned fees. We propose to continue requiring advisers to give clients an audited balance sheet showing the adviser's assets and liabilities at the end of its most recent fiscal year.[196] We propose to exclude from the balance sheet requirement advisers that have custody, but are banks, insurance companies, or broker-dealers registered with us.[197] These firms have capital and regulatory requirements that provide protections against these types of losses.

We are also proposing to require advisers with discretionary authority over client assets to disclose, in their brochures, any financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients. These clients are exposed to the risk that their assets may not be properly managed for a period of time if the adviser becomes insolvent and ceases to do business. This disclosure is currently required by rule 206(4)-4, which, as discussed above, we propose to rescind.

Finally, we would require an adviser that has been the subject of a bankruptcy petition during the past ten years to disclose that fact to clients. Clients would likely find this information material to their decision whether to hire the adviser.[198] We request comment on other disclosures

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however, receive this information under current Item 13 of Part I.

[187] An adviser that ''requires'' clients to give it custody solely because it acts as general partner for a limited partnership, serves as trustee for client accounts, or deducts advisory fees directly from client accounts would not be required to provide this disclosure.

[188] An adviser would not be required to make this risk disclosure if it is a bank, an insurance company, or a broker-dealer that is excepted from rule 206(4)–2 (17 CFR 275.206(4)–2). Rule 206(4)–2 sets out requirements with regard to custody of advisory client assets and securities, and is intended to ensure that client funds and securities are maintained so that they are insulated from and not jeopardized by unlawful activities or financial reverses of the adviser. *See* Investment Advisers Act Release No. 122 (Nov. 3, 1961) (26 FR 10607 (Nov. 10, 1961)) (proposing rule 206(4)–2). As discussed *infra* at the text accompanying notes 196 to 197 (and discussing Item 18 of proposed Part 2A), banks, insurers, and registered broker-dealers have capital and regulatory requirements that provide protections against the same types of losses that rule 206(4)–2 was designed to prevent.

[189] Currently, Items 12.A. and 12.B. of Part II require information about the adviser's investment discretion and any limitations on it. We propose to continue requiring this information but to clarify, through our proposed definitions in Form ADV, that an adviser has ''discretionary authority'' if it is authorized to make purchase and sale decisions for client accounts. This definition of discretionary authority is derived from section 3(a)(35) of the Exchange Act (15 U.S.C. 78b(a)(35)). An adviser also has discretionary authority if it is authorized to select other advisers for the client.

[190] For example, clients may not understand that they may ask the adviser not to invest in securities of particular issuers.

[191] Without appropriate disclosure, some clients may incorrectly assume their adviser is voting their proxies.

[192] In some cases, advisers have conflicts of interest in voting proxies. For example, the adviser may manage money for a public issuer and may recommend that its other clients invest in the issuer's securities. The public issuer client may want the adviser to vote proxies in a manner that conflicts with the best interests of the adviser's other clients. Or, an adviser's affiliates may have a substantial business relationship with an issuer in which advisory clients invest, and those affiliates may pressure the adviser to vote in favor of the issuer's management. Many advisers already have policies designed to protect their clients' interest in these circumstances. Proposed Item 16 would require the brochure to disclose those policies.

[193] We understand that advisers to ERISA plans may be required to maintain voting records for individual proxy solicitations on the client's account, and to provide the plan fiduciary with those records. *See* Department of Labor Interpretive Bulletin 92–4 (July 21, 1994).

[194] Organizations such as the Association for Investment Management and Research (AIMR) have established guidelines for advisers to use in presenting performance information. Some advisers may be able to claim compliance with the AIMR Performance Presentation Standards™ (AIMR–PPS). AIMR–PPS specify minimum calculation requirements, although the standards themselves are primarily performance presentation standards rather than performance measurement standards. AIMR Performance Presentation Standards Handbook 1 (2nd ed., 1997).

[195] Proposed Item 17 incorporates requirements currently in Item 7(h) of Schedule H; under Schedule H, wrap fee sponsors must provide similar disclosure about review of portfolio managers' performance information and standards used to calculate that information.

[196] Currently Item 14 of Part II (through Schedule G) requires an audited balance sheet if the adviser has custody of client funds or securities, or requires prepayment of more than $500 in fees per client and six or more months in advance. We would increase the threshold amount from $500 to $1,200 to reflect the effects of inflation since we adopted Uniform Form ADV in 1985. We also propose to require this disclosure from advisers that *solicit* clients to prepay fees, which would include providing an economic incentive to prepay fees. Our staff has previously provided guidance consistent with this proposed requirement. *See* Sunbelt Farm Investment Report, SEC No-Action Letter (Mar. 18, 1985); *see also* Seger-Elvekrog, Inc., SEC No-Action Letter (Oct. 13, 1998) (adviser that allowed clients to prepay fees, at clients' initiative and contrary to adviser's usual billing practices, was not required to provide an audited balance sheet).

[197] Advisers also may be deemed to have custody of client assets when their affiliates have custody of those assets. *See* discussion of proposed Item 14, *supra* at notes 186 to 188 and accompanying text. We have excluded an adviser from the balance sheet requirement if the adviser is deemed to have custody but the affiliate having custody of client assets is itself a bank, insurance company or registered broker-dealer.

[198] Part II does not currently require advisers to disclose this information to clients. Current Item 11.K. of Part I requests similar information, but is not limited to bankruptcies occurring within ten years.

concerning bankruptcies. Should Item 18 require disclosure if the subject of a bankruptcy petition was a predecessor adviser? A management person? [199] Another firm under common control with the adviser?

Item 19. Index. The brochure filed with us would be required to include an index of the items required by Part 2A.[200] This index is intended to facilitate review by our staff for compliance with the requirements of Part 2A; the adviser would not need to provide it to clients.

Part 2A Appendix 1: The Wrap Fee Program Brochure. Advisers that sponsor wrap fee programs [201] would be required to prepare a separate, specialized firm brochure referred to as a ''wrap fee program brochure'' or ''wrap brochure,'' and would be required to give the wrap brochure to clients of the wrap fee program, in lieu of the sponsor's standard advisory firm brochure.[202] The ten items in Part 2A Appendix 1 contain the proposed requirements for a wrap fee program brochure, which are substantially similar to those currently in Schedule H, with changes to incorporate many of the proposed revised requirements for other firm brochures.

b. Part 2B: The Brochure Supplement

As discussed above, we are proposing that adviser brochures be accompanied by brochure supplements providing information about the adviser's advisory personnel. We believe that clients want and need information about the individuals on whom they will rely for investment advice.

The current brochure requirements of Form ADV consist of a series of compromises on disclosure about advisory personnel that we believe can be improved on. We currently require brochures to include background information only on firm executives and members of the firm's ''investment committee,'' [203] which does not include most advisory personnel of the growing number of larger advisory firms registered with us.[204] It is unclear to us whether the information provided about executives and investment committee members is useful to most clients of these firms. Moreover, brochures contain no information about the disciplinary backgrounds of advisory personnel—information that may be of key importance to a client who may be entrusting his investments to the care of the individual.[205] When we considered Uniform Form ADV in 1985, we recognized these shortcomings of the brochure, and proposed expanding the required background information on advisory personnel.[206] We decided not to do so after commenters objected that many advisers' brochures would become lengthy and less readable.[207]

Today we are proposing a different approach to resolving the same concerns that led to the 1985 proposals. We propose to require advisers to prepare separate supplements for advisory personnel—called ''supervised persons.'' [208] Each supplement would contain background information about an individual or group.[209] Advisers would be required to give a client a supplement only for a supervised person who will provide advisory services to that client. Thus, a client would receive information about supervised persons who are specifically relevant to that client. The supplements should only be a page or so in length, and each supervised person could provide clients with his own supplement along with the firm's brochure as he would a resume.[210] Supplements would not have to be filed with us, but would be kept by advisers for review by our examiners.[211] We are not proposing to require that advisers file supplements with us, in part because of the additional cost of building the IARD to accept supplements. The additional cost would have to be reflected in higher filing fees. The most important information in the supplements—the supervised person's disciplinary history—would be reported on the DRP Schedules in Part 1 of Form ADV and available through the IARD. Moreover, prospective clients could obtain supplements from advisers. On balance, we concluded that the additional costs of requiring advisers to file supplements with us exceeded the benefits. We request comment on this conclusion.

Under our proposed amendments to rule 204–3, an adviser must deliver a supplement for a supervised person to a client before or at the same time the supervised person begins to provide advisory services for the client.[212] The proposed rule would require delivery to a client only if it is expected that the supervised person will either (i)

[199] Brochure supplements would be required to disclose whether a supervised person has been the subject of a bankruptcy petition. *See* proposed Item 7 of Part 2B. A client, however, would not necessarily receive a supplement for all management persons.

[200] This requirement is similar to the index Schedule H now requires.

[201] Under a wrap fee program, advisory clients pay a specified fee for investment advisory services and the execution of transactions. The advisory services may include portfolio management and/or advice concerning selection of other advisers, and the fee is not based directly upon transactions in the client's account.

[202] We adopted the requirement for a separate brochure for wrap fee clients in 1994, and we continue to believe that wrap fee program clients should receive a separate brochure containing only information relevant to wrap fee program clients. *See* Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1411 (Apr. 19, 1994) (59 FR 27659 (May 27, 1994)) (adopting rules to require wrap fee sponsors to give wrap fee clients separate brochures); Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1401 (Jan. 13, 1994) (59 FR 3033 (Jan. 20, 1994) (proposing wrap fee brochure rules). Advisers whose entire advisory business is sponsoring wrap fee programs would prepare a wrap brochure but would not be required to prepare a standard advisory firm brochure. Wrap fee sponsors would, like other advisers, be required to provide brochure supplements to their wrap fee clients.

[203] Item 6 of Part II of Form ADV. If the firm has no investment committee, we require that background information be provided for each individual who determines general investment advice given to clients. If there are more than five of these persons, then information need only be provided for their supervisors. *Id.*

[204] In the case of a small firm consisting of an owner and a few employees, the current disclosure requirements may require disclosure of all the firm's advisory personnel. After the enactment of NSMIA in 1996, most of the smaller firms withdrew their registrations with us and are now regulated by state securities authorities.

[205] Brochures currently are not required to contain information about the adviser's disciplinary history either. *See* discussion *supra,* at section II.D.2.b. of this Release.

[206] Investment Advisers Act Release No. 967, *supra* note 146.

[207] Investment Advisers Act Release No. 991, *supra* note 42.

[208] Under our proposed rule 204–3 and proposed Glossary of Terms to Form ADV, a ''supervised person'' means any of the adviser's officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on the adviser's behalf. This is substantially similar to the definition in section 202(a)(25) of the Advisers Act (15 U.S.C. 80b-2(a)(25)).

[209] A smaller advisory firm that chose to include information about all advisory personnel in its firm brochure would not need any supplements. *See* Instruction 5 to Part 2B. Advisers would be free to determine whether they wish to provide the background information on advisory personnel in supplements or as part of its firm brochure.

[210] Pursuant to our authority under section 204 of the Advisers Act, our proposed rule 204–3 would require the adviser to deliver the supplements as well as the firm's brochure. We recognize that in most cases, however, the adviser will have supervised persons deliver their supplements to clients and may have a supervised person deliver the brochure. In proposed rule 204–3(b)(1) and proposed Instruction 2 to Part 2B, we make it clear that the firm can delegate this responsibility to a supervised person.

[211] Our recordkeeping rules would require the adviser to preserve a copy of each supplement, including any revised supplements or stickers, and to make them available to SEC staff. *See* proposed rule 204–2(a)(14), General Instruction 5 to Part 2, and Instruction 7 to Part 2B.

[212] Supplements will likely be given to the client along with the firm brochure, at the start of the advisory relationship. If a supervised person will not provide advisory services until later, however, the supplement for that individual can be delivered at that time.

regularly communicate investment advice to that client,[213] or (ii) formulate investment advice for that client, including exercising investment discretion over that client's assets.[214] Advisers would not have to deliver a supplement for a supervised person who has no client contact and formulates advice only as part of a team. This provision is designed to require information about persons who have substantial responsibility for the investment advice clients receive. The requirements for updating a brochure supplement and delivering the corrected information to clients would be essentially the same as for the firm's brochure.[215] We request comment on the scope of the delivery requirement. Are there better ways to provide clients with information about a firm's advisory personnel?

The contents of brochure supplements would be specified by Part 2B, which would consist of seven items. Where Part 2A would require disclosure about the advisory firm, Part 2B would require disclosure about certain supervised persons of the advisory firm. We request comment on the scope of proposed Part 2B. Will clients find this to be useful information? Is there other information about supervised persons that clients need and that we should require in brochure supplements?

Item 1. Cover Page. The supplement's cover page would include information identifying the supervised person and the advisory firm.

Item 2. Educational Background and Business Experience. The supplement would be required to describe the supervised person's formal education and business background for the past five years.[216] Professional designations have also become important to a client's understanding of the supervised person's qualifications in the investment adviser industry. We are therefore proposing that the supplement identify the supervised person's professional designations or attainments.

Item 3. Disciplinary Information. The supplement would be required to disclose the disciplinary history of the supervised person. We are proposing substantially the same disclosure requirements for the supervised person's disciplinary history as we are proposing for the firm's disciplinary history.[217] Item 3 would also require, again because of the importance of professional designations, that the supplement disclose any proceeding revoking or suspending a professional attainment, designation, or license of the supervised person.

In the case of a supplement for a single individual, a client receiving an updated supplement should be able to identify any new disciplinary disclosure easily. We request comment, however, on whether this information might be obscured in supplements prepared for groups of supervised persons. Should a supplement for a group be required to highlight any changes to disciplinary disclosure, or otherwise alert clients to the change? If so, should the alert appear on the cover page of the supplement, or should it accompany the disciplinary disclosure itself?

Item 4. Other Business Activities. We would require the supplement to describe any other business activities of the supervised person, particularly other capacities in which the supervised person participates in the financial markets.[218] A relationship between the business of the advisory firm and other business of the supervised person may create a material conflict of interest with the adviser's clients. If this occurs, the supplement would be required to describe the nature of the conflict and any procedures the adviser uses to address the conflict.

The supplement would also disclose whether the supervised person receives transaction-based compensation, including bonuses and non-cash compensation. As discussed earlier,[219] this practice creates an incentive for the individual to base investment recommendations on his own compensation rather than on clients' best interests. If the supervised person receives transaction-based compensation, we would require the supplement to explain this incentive.

Item 5. Additional Compensation. A supplement would be required to describe arrangements in which someone other than a client gives the supervised person an economic benefit (such as a sales award or other prize) for providing advisory services.[220]

Item 6. Investment Advice and Supervision. Not all supervised persons formulate the investment advice they give to their clients, so we propose to require the supplement to discuss who formulates that advice. If the supervised person does formulate advice for clients, the supplement would also explain how the firm monitors the advice provided.

We would also require the supplement to provide the client with the name, title and telephone number of the person responsible for supervising the advisory activities of the supervised person. This information would permit the client to contact other advisory personnel when necessary to address any problems in the advisory relationship.

Item 7. Financial Information. The supplement would be required to disclose whether the supervised person was the subject of a bankruptcy petition during the past ten years.

3. Execution Pages

Form ADV would be electronically ''signed'' by an authorized person of the adviser before the form could be submitted to the IARD. The authorized person would sign the form by typing his or her name and submitting the filing on behalf of the adviser.[221] Under the proposed amendments, an authorized person would sign one of three different execution pages, depending on whether the adviser is resident in the United States or another country and whether it is registered or registering with the Commission or the states.[222] As under current Form ADV,

[213] We have included the term ''regularly'' in the proposed rule, to prevent casual communications from causing a violation of the delivery requirement. We would intend the term to be interpreted in the context of the overall advisory relationship with the client. For example, a supervised person who provides a financial plan to a client would be regularly communicating advice to the client even if they meet only once or twice.

[214] Proposed rule 204–3(b)(1)(B). If a supervised person neither communicates investment advice regularly to any client nor formulates investment advice for any client, no supplement would be required for that supervised person. Instruction 1 to Part 2B of Form ADV.

[215] *See supra* text accompanying notes 112–123.

[216] Currently, Item 6 of Part II of Form ADV requires this information about the adviser's principal executive officers and about individuals who determine general investment advice on behalf of the adviser.

[217] *See* proposed Item 8 of Part 2A. As discussed earlier, *supra* note 153, proposed rule 204–2(a)(14)(ii) would require an adviser to keep a file memorandum if the adviser determines not to disclose an event of the type described in Item 3 of Part 2B.

[218] Item 4 of Part 2B would be similar to proposed Item 9 of Part 2A. The supplement would, however, also disclose information regarding any other business activities or occupation that the supervised person engages in for pay. Clients may have different expectations of an individual whose sole business is providing investment advice than of an individual for whom advisory services are a sideline. We are proposing this requirement so that clients can evaluate the importance of the advisory business to the supervised person. If another line of business provides the supervised person's primary source of income, the supplement would say so explicitly.

[219] *See* proposed Item 5 of Part 2A.

[220] The proposed item would specify that regular salary need not be disclosed. Bonuses based (in part or whole) on sales, client referrals or new accounts would trigger required disclosure, but other bonuses would not.

[221] *See supra* note 47 (noting that the electronic signature required by the IARD is not a digital signature).

[222] The IARD will select the proper execution page for an adviser depending upon identifying

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by signing the form, the authorized person would affirm that the information in the form is true and complete, and would appoint certain officials as agents for service of process in states where the adviser conducts business.[223] These appointments allow state securities authorities, private parties, and us to bring actions against the adviser by delivering necessary papers to any or all of the appointed agents.[224]

Non-resident advisers,[225] in addition to executing Form ADV, currently must submit a separate form appointing the Commission as their agent for service of process.[226] Non-resident advisers also submit a separate undertaking to provide required books and records to our staff.[227] We propose to incorporate both of these requirements into a Form ADV execution page that would be used by non-resident advisers, and thereby eliminate the additional filings non-resident advisers currently make.[228] In addition, non-resident general partners or managing agents of all SEC-registered advisers must appoint the Commission[229] as their agent for service of process on Form 7–R.[230] We propose to revise Form 7–R and rename it Form ADV–NR. The form would be filed with us in paper format.[231]

A separate execution page for state-registered advisers has been prepared by NASAA. It is similar to the one for SEC-registered advisers, but includes affirmations that would be required for state registration.[232]

E. Proposed Revisions to Form ADV–W

Form ADV–W was designed for an adviser to use to withdraw its registration after ceasing operations.[233] Today, SEC-registered advisers also use the form to switch to state registration,[234] and state-registered advisers use it to withdraw their registration with one or more states while remaining registered with others. We propose to amend Form ADV–W to reflect this expanded use.[235] As proposed, an adviser could file Form ADV–W to withdraw from some (partial withdrawal)[236] or all (full withdrawal) jurisdictions in which it is registered. An adviser ceasing operations would complete the entire form to file for full withdrawal.[237] An adviser filing for partial withdrawal would omit certain items, such as the location of its books and records, that we do not need from an adviser continuing in business as a state-registered adviser.[238] We request comment on these proposed revisions.

F. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and forms, and the proposed rule and form amendments that are the subject of this Release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also are requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules and has, in preparing this proposal, carefully balanced the two. As described in more detail below, electronic filing will impose some costs on advisers, particularly the filing fees that advisers will pay to the operator of the system. We believe that electronic filing will yield substantially greater benefits to advisers and investors. The new, improved disclosure requirements will also impose additional costs. These costs are chiefly transitional costs, as advisers prepare new brochures and brochure supplements for the first time. We believe that, over time, these costs will be more than justified by the ongoing benefits to clients who receive better, more useful disclosure.

A. Electronic Filing Requirements

The rules we are proposing will require advisers to make filings with us through the Investment Adviser Registration Depository (IARD). Although advisers will pay fees to

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information the adviser will have provided on the form. An adviser that chooses to register both with the Commission and one or more states would be required to complete two execution pages, one for SEC registration and one for state registration.

[223] Currently, an adviser appoints an official of each state in which the adviser is registered (or has a registration pending, or, within the past ten years, either withdrew before registration or was previously registered). *See* Item 7 and the Execution Section of Part I of Form ADV. As proposed, an adviser would appoint an official in the state where it maintains its principal office and place of business, and each state where it submits a notice filing (if SEC-registered) or is registered or registering (if state-registered).

[224] Each agent currently can receive service of process for ''any action or proceeding.'' As proposed, the agent also could receive service for administrative and arbitration proceedings. By including arbitration proceedings in the form, we are not addressing whether advisers may require clients to resolve disputes under the Advisers Act through arbitration or other alternate dispute resolution forum. *Cf. Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U.S. 477 (1989) (upholding the arbitrability of disputes arising under the Securities Act); *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220 (1987) (upholding the arbitrability of disputes arising under the Exchange Act).

[225] A non-resident adviser has its principal office and place of business in a location outside of the United States. Rule 0–2(d)(3) (17 CFR 0–2(d)(3)). Non-resident advisers generally register with the Commission and not the state securities authorities, because their principal office and place of business is not in a state that regulates advisers. *See* section 203A(a) and proposed Item 2.A(3) of Part 1A.

[226] Rule 0–2. Each non-resident adviser currently is required to appoint an agent for service of process on Form 4–R (for a sole proprietor) (17 CFR 279.4), Form 5–R (for a corporation) (17 CFR 279.5), or Form 6–R (for a partnership) (17 CFR 279.6).

[227] Rule 204–2(j)(3) (17 CFR 275.204–2(j)(3)) requires a non-resident adviser to provide this undertaking unless it agrees to keep a duplicate, ''shadow'' set of books and records in the United States.

[228] We are proposing to eliminate Forms 4–R, 5–R and 6–R, and to amend the corresponding rule to delete unnecessary text. *See* proposed amendment to rule 0–2.

[229] *See* proposed rule 0–2(a). This appointment does not change based on whether the adviser is located in the United States or in another country. A general partner or managing agent of an adviser is ''non-resident'' if he or she resides in a place not subject to the jurisdiction of the United States. Rule 0–2(d)(4) (17 CFR 0–2(d)(4)).

[230] This appointment is intended to make the Advisers Act as enforceable against a non-resident person as it is against a person resident in the United States. *See* Consent to Service of Process to Be Furnished by Non-Resident Investment Advisers and by Non-Resident Investment General Partners or Managing Agents of Investment Advisers, Investment Advisers Act Release No. 74 (June 30, 1954) (19 FR 4300 (July 14, 1954)).

[231] We propose to require partners and agents to file Form ADV-NR with us on paper due to the limited number of filings we expect. *See* discussion of forms that will be filed on paper, *supra* note 38. Non-resident general partners and agents would appoint the same agents (the Commission and various state officials) as a non-resident adviser.

[232] The state-registered adviser execution page is included in Appendix A of this Release. Completing this execution page would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on it. We will, however, pass your comments on to NASAA.

[233] *See* Investment Advisers Act Release No. 213, *supra* note 52.

[234] *See* discussion on ''switching'' to state registration, *supra* notes 53 to 56 and accompanying text.

[235] Form ADV–W is attached to this Release as Appendix B of this Release.

[236] A state-registered adviser withdrawing from registration with some states, for example, would file a partial withdrawal, as would an adviser switching to SEC or to state registration.

[237] We would require advisers filing for withdrawal to affirm the accuracy and completeness of their Form ADV when filing Form ADV-W. Proposed Form ADV–W would, however, no longer require certain information that we no longer need.

[238] An SEC-registered adviser switching to state registration would complete part of Item 1 and electronically sign the form. *See* page 1 of proposed Form ADV–W at Appendix B of this Release. At the request of NASAA, state-registered advisers filing for partial withdrawal would complete additional items. *See id.* These additional requirements would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on them.

submit certain filings through the system, the IARD will also provide substantial benefits to advisers, including eliminating many of the costs advisers currently incur in filing their Form ADV. Today, advisers must prepare registration materials on paper, copy them, and submit the paper copies to both the SEC and states. Many of these copies must be manually signed and notarized. Correcting a mistake requires the adviser to repeat this entire process. The IARD, in contrast, would permit an adviser to satisfy all of these filing obligations by submitting a single electronic filing prepared using a personal computer in its office.[239] Electronic signatures could be used, and mistakes could be corrected by simply typing over incorrect information and re-sending the electronic submission.[240] Today, advisers must determine the amount of filing fees due each state, prepare checks and mail them so that they are delivered in a timely manner.[241] Errors can result in penalties or cause disruptions in business. The IARD, in contrast, would eliminate these costs by automatically determining the amount of filing fees owed and debiting the adviser's account when those fees are due.[242] These benefits should more than justify the filing fees and other expenses for the typical adviser registered with the Commission.

In drafting the new form, we have sought additional ways to reduce costs. An adviser may save a partially completed form as a ''draft'' that the adviser can access and complete at a later time. Our proposed on-line glossary would allow an advisers' personnel to refer to explanations of key terms while completing Form ADV, and we would also provide an on-line ''help'' function, to answer frequently-asked questions and provide guidance on completing the form.[243] When an adviser prepares an amendment to its Form ADV, the IARD will pre-populate most of the items from the adviser's previous filings, reducing the adviser's time (and therefore expense) in completing the amendment. Further, we have designed the IARD so that advisers that also are registered as broker-dealers will complete Schedules to their Form ADV by ''linking'' to parallel responses in their Form BD already on file. Thus, these firms will recognize additional cost savings by avoiding entering certain data twice.[244]

We have taken into consideration that not all advisers may have access to the Internet. A continuing hardship exemption would be available to certain ''small advisers'' that are unable to file through the IARD without undue burden and expense (if, for example, the adviser does not have Internet access and is unable to afford a filing service).[245] The continuing hardship exemption is intended to minimize any burden imposed by the electronic filing requirements.

The IARD also has the potential to speed the registration process for investment adviser representatives of SEC-registered advisers. Registration of investment adviser representatives on the IARD will be a matter for state securities authorities; we do not register or license investment adviser representatives. Our experience with the CRD system, however, provides an analogy. Our understanding of how broker-dealer agent filings on the CRD system are processed suggests that electronic filings on the IARD for investment adviser representatives are likely to be more efficient and cost effective than the current system of paper filings.

Electronic filing also will produce substantial benefits for investors. First, and most important, the information on these filings will be available for investors to view, without cost, on a web site.[246] Investors will be able to determine, for example, whether a prospective adviser has reported disciplinary events, what types of fees it charges, and whether the types of advisory services it offers are designed to meet their needs. As a result, investors—potential clients—will be in a better position to make informed decisions.

The added ''sunlight'' the web disclosure will shine on advisers may have additional, secondary benefits. Information from advisers' filings will be available through a web site, and easy availability of information about advisers and advisory affiliates may, for example, discourage advisers from engaging in certain practices or hiring certain persons (such as those with disciplinary history or limited qualifications). Investors' access to information may also facilitate greater competition among advisers, which may in turn lower prices or encourage the development of different fee structures or different kinds of services that may benefit clients. These types of benefits are difficult to isolate or to quantify, but our experience is that they are real and are often the result of better disclosure.

Electronic filing will also give us better access to information about advisers to administer our regulatory programs. We expect this information will permit us to increase both the efficiency and effectiveness of our programs and thus increase investor protection. The IARD will permit us to better monitor advisers' failure to make required filings, identify advisers whose activities suggest a need for closer scrutiny, and manage our regulatory programs. The IARD will generate reports on the industry, its characteristics and trends. These reports will help us anticipate regulatory problems, allocate and reallocate our resources, and more fully evaluate and anticipate the implications of various regulatory actions we may consider taking.

B. Proposed Form ADV

We have divided proposed Form ADV into two parts, Part 1 and Part 2. For purposes of assessing costs and benefits, each part is discussed separately below.

1. Part 1

SEC-registered advisers would experience few additional costs in completing revised Part 1. We have re-drafted Part 1A in plain English, improved its organization, and added instructions to clarify some items. Proposed Part 1A would require no additional information that should not be readily available to an adviser. The revised Schedules would make it much simpler, in comparison to current Schedules A, B, and C, to provide information about control persons.[247]

[239] *See* discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

[240] The IARD will also prevent advisers from making incomplete filings. Submitting an incomplete filing is a common error by new advisers applying for registration, and is one that can substantially delay the registration process and thus the business plans of applicants. *See* discussion of electronic filing requirements, *supra* Section II.A.1. of this Release.

[241] Postage expenses alone can cost an SEC-registered firm $750 per year. This estimate assumes an average overnight mail cost of $10 per mailing in each of 50 states and an average of 1.5 amendments filed per year ($10 × 50 × 1.5) = $750.

[242] The Commission does not charge any filing or other fees. *See supra* note 36 (discussing elimination of investment adviser registration fees charged by the Commission).

[243] *See* discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

[244] Approximately 900 SEC-registered advisers also are registered with us as broker-dealers.

[245] *See* discussion of proposed hardship exemptions *supra* at Section II.B.4. of this Release.

[246] Investment adviser information is publicly available from us, but until now we have been unable to provide this information to the public without charge. We currently charge $.24 per page for copies and, upon receipt of the required fee, mail the Form ADV to the requester.

[247] An adviser generally would no longer be required to report an indirect owner unless the

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While smaller advisers may find these benefits limited, larger advisers (particularly advisers that are part of a larger, more intricate corporate structure) should see cost savings from the proposed changes to the Schedules. The proposed new Disciplinary Reporting Pages (DRPs) would require substantially more detailed information about disciplinary events than is specified in the current form, but the new DRPs should serve mainly to clarify existing disclosure obligations, which are worded more generally.[248] Moreover, we would only require an adviser to report disciplinary events occurring in the past ten years,[249] and would remove information about the educational and business background of employees.[250] We expect that these changes will justify any additional costs associated with amendments to Part 1A.

2. Part 2

An analysis of the costs and benefits of Part 2 is more complex. Most advisers would be required to replace their current Part II with a narrative brochure in plain English, and to re-file this new brochure with us. In addition, the disclosure in the new brochure may be more complete, and in some cases more detailed, than Form ADV currently requires. Thus, drafting the new narrative brochure will likely entail additional expenses.

Most of the cost associated with preparing a brochure would be incurred in the initial preparation, specifically in drafting the narrative brochure. Advisers are already required to provide us and/or their clients with much of the information required in the new brochure,[251] so we do not expect advisers to have substantial expenses in gathering this information. In addition, since most of the costs of redrafting the new brochure will be incurred in the first year, we do not expect proposed Part 2A to result in any significant cost increase over time. The cost of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure. Drafting a brochure to describe the adviser's business practices and disclose conflicts of interest need not be a long or an expensive process. Some advisory firms, however, may elect to use their brochure to market their services, as well as to make required disclosure. These firms will likely face significantly higher expenses, particularly if they bring in legal, design and marketing professionals. Other firms may choose to prepare multiple brochures, which would also require higher drafting costs.

Under the proposed rules, the brochure would have to be reprinted annually to incorporate all interim amendments. The cost of printing a narrative brochure, however, should not be substantially different from the current cost of printing Part II; the narrative brochure is not required to be professionally printed. Further, we have sought to make interim amendments inexpensive by permitting advisers to use ''stickers'' to correct a brochure. We also do not anticipate that the costs of distributing the proposed brochures (and stickers) would be significantly higher than the costs of distributing Part II or a brochure under existing delivery requirements. These costs currently vary among advisers, depending on how the adviser delivers the brochure and the number of advisory clients who receive it.[252] Because of this large number of variables—initial drafting costs, number and extent of corrections, mode of distribution, number of clients, and others—quantifying the overall costs to advisers of the proposed narrative brochure is not practicable.

Advisers also would incur some costs to prepare brochure supplements for supervised persons, but the supplements would provide important disclosure to advisory clients about relevant advisory personnel. Many supervised persons are already subject to state regulation as investment adviser representatives, and much of the information needed for the brochure supplement can be obtained from the adviser's current Form ADV and the representative's registration application.[253] The costs of preparing brochure supplements would also vary widely from one adviser to the next, depending on the number of supervised persons of the adviser, the extent of a supervised person's professional and educational background, and the amount of disciplinary information required to be disclosed. The aggregate cost to the investment adviser industry in preparing the proposed brochure supplements therefore is not readily quantifiable. The proposed amendments would, however, include several options to minimize advisers' costs in preparing and distributing the brochure supplements.[254]

C. Form ADV–W

Advisers would incur less cost in completing proposed Form ADV–W than in completing the current form. Under proposed amended Form ADV–W, the adviser would complete only those items needed to process the withdrawal.[255] Form ADV–W would also become effective immediately, rather than after a sixty-day ''waiting period,'' thereby smoothing the transition period for advisers switching to state registration.

D. Request for Comment

We request comment on the effects of the proposed rule and form amendments on individual investment advisers and on the advisory profession as a whole, and request data to quantify the costs and value of the benefits associated with these proposed amendments. Specifically, we request comment on the cost savings for advisers (and their representatives) filing through the IARD. We also request data on advisers' current costs of complying with state notice filing and investment adviser representative registration requirements. We also request comment on the costs of completing and re-filing Part 1A of proposed Form ADV, and of preparing and delivering the firm brochure, wrap

indirect owner owned 25% of a direct owner. *See* discussion of proposed Schedules, *supra* Section II.D.1. of this Release. *See supra* note 102 (describing difficulties for foreign-owned broker-dealers to obtain ownership information).

[248] Moreover, most advisers do not have disciplinary events to report.

[249] *See* discussion of disciplinary disclosure requirements *supra* at Section II.D.1.a.ii. of this Release. We also are proposing to stop requiring advisers to report unsatisfied judgments or liens; bankruptcies; bond denials, payouts, or revocations; or any ''minor'' rule violations. *See* discussion of ''minor'' rule violations, *supra* Section II.D.1.a.ii. of this Release, and note 95 and accompanying text (discussing ''minor'' rule violations).

[250] For many supervised persons providing advisory services, this information would appear in the proposed brochure supplements. *See* discussion of proposed brochure supplements, *supra* at Section II.D.2.b. of this Release.

[251] *See* discussion of the firm brochure, *supra* Section II.D.2.a. of this Release.

[252] For example, if the adviser has arranged to deliver the firm brochure (and written brochure updates) to its advisory clients by electronic media, it would not incur costs to print and mail the brochure to its clients (or to offer it to them each year). *See* Investment Advisers Act Release No. 1562, *supra* note 123.

[253] Investment adviser representatives typically apply for state registration by filing Form U–4. *See supra* note 27.

[254] A small adviser, for example, could choose to include all required information for each supervised person in its firm brochure and thus not prepare any brochure supplements. Firms that have one or more groups of supervised persons providing advisory services could consolidate information about all members of a particular group into one brochure supplement. *See* discussion of Part 2B, *supra* Section II.D.2.b. of this Release. Advisers whose services did not trigger a delivery requirement (for example, advising registered investment companies or providing only impersonal investment advice) would not be required to prepare brochure supplements.

[255] *See* discussion of Form ADV–W, *supra* Section II.E. of this Release.

brochure, and brochure supplement(s). Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Paperwork Reduction Act

The proposed rule and form amendments contain several ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[256] and the Commission has submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are ''Form ADV,'' ''Schedule I to Form ADV,'' ''Rule 206(4)–4,'' ''Form ADV–W and Rule 203–2,'' ''Rule 0–2 and Forms 4–R through 7–R,'' ''Rule 204–2,'' and ''Rule 204–3,'' all under the Advisers Act. We are proposing to amend Form ADV, Schedule I to Form ADV, Rule 206(4)–4, Form ADV–W and Rule 203–2, Rule 0–2 and Forms 4–R through 7–R, Rule 204–2, and Rule 204–3. These rules and forms contain currently approved collection of information numbers under OMB control numbers 3235–0049, 3235–0490, 3235–0345, 3235–0313, 3235–0240, 3235–0278, and 3235–0047, respectively. We also are proposing new rule 203–3 and new Form ADV–H, which both would contain a collection of information requirements. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB number is displayed.

Form ADV

Form ADV contains collection of information requirements. Rule 203–1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–1 requires each registered adviser to file amendments to Form ADV at least annually, and also would require advisers to begin submitting electronic filings through the IARD. This collection of information is found at 17 CFR 275.203–1, 275.204–1, and 279.1 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with us or applying for registration after advisers begin making filings through the IARD.

An increase in the number of respondents to the collection of information for Form ADV will increase the currently approved burden of the collection of information. The current burden for new registrants is approximately 6,848 hours,[257] and assumes approximately 760 new applicants per year and a weighted average of 9.01 hours per adviser. The current burden also applies to current registrants amending their Form ADV, is approximately 1.07 hours per amendment, and is based on approximately 7,300 advisers registered with us and filing 11,810 amendments annually. The current total burden for all advisers filing Form ADV is 19,448 hours.

Based, however, on the Commission's recent experience in processing investment adviser registration applications, the Commission now estimates that approximately 1,000 advisers each year are new applicants for SEC registration, increasing the total burden by 2,162 hours.[258] Also, approximately 8,100 advisers are registered with us, increasing the current burden of filing amendments to Form ADV by 1,541 hours.[259] The total increase in the collection of information for Form ADV resulting from an increase in the number of respondents is 3,703 hours.[260]

The collection of information for Form ADV would incorporate the burdens of rule 206(4)–4 and Schedule I into Form ADV. The collections of information for rule 206(4)–4 and Schedule I to Form ADV are discussed below.

The proposed amendments to Form ADV at first would increase the paperwork burden, as most advisers would have to redraft and disseminate a narrative brochure and brochure supplements. The paperwork burdens of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure, and also because the amount of disclosure required would vary among advisers. Most of the new paperwork burden would be incurred in this initial preparation, specifically in drafting the narrative text. Once the adviser has redrafted its narrative brochure, proposed Parts 2A and 2B are not expected to result in any significant burden increase over time (except for changes to the brochure that are necessitated by changes in the adviser's business).[261] Part 1A is expected to impose a minimal paperwork burden, as none of the new items requests information that should not be readily available to the adviser. The efficiencies of filing through the IARD, over time, are expected to reduce the initial burdens associated with completing the revised Form ADV.

The burdens associated with using the revised form would be amortized over the estimated period that advisers would use their revised brochure. We adopted significant changes to Form ADV in 1985,[262] and required advisers to re-file their amended Form ADV, and to prepare and begin using a new brochure. At that time, advisers incurred paperwork burdens in the ''start-up'' costs of the revised Form ADV. Once advisers re-filed their Form ADV, advisers' paperwork burdens generally were limited to amending the form as needed. Advisers thus have used current Form ADV (and thus the current brochure) for approximately the past fifteen years (depending on exactly when they re-filed their Form ADV with us). The paperwork burdens of the revised form would be amortized over a similar fifteen-year period.[263]

The additional burdens that would be imposed by the revised form also would be reflected in the revised collection of information. During the first year that an adviser uses new Form ADV, the burden of completing the revised form for the first time would result in a new total collection of information burden of an estimated 22 hours per adviser, including preparation of brochure supplements. This total collection of information would total 22,000 hours for new registrants and 178,200 hours for currently registered advisers that re-file Form ADV through the IARD system, for a total of 200,200 hours.[264]

[256] 44 U.S.C. 3501 to 3520.

[257] This current burden does not include the burden imposed by rule 206(4)–4 of 6,755 burden hours per year. Under the proposed amendments, the collection of information under this rule would be incorporated into Form ADV's collection of information requirements, and is reflected in the estimates below.

[258] (240 more advisers applying for registration x 9.01 hours) = 2,162.4 hours.

[259] ((800 more currently-registered advisers × 1.5 amendments) + (240 new applicants × 1 amendment)) × 1.07 hours = (1,200 + 240) × 1.07 = 1,440 × 1.07 = 1,540.8.

[260] 1,541 hours + 2,162 hours = 3,703 hours.

[261] The burden of amending Form ADV to reflect these changes in the brochure is expected to be similar to the current burden of reflecting these changes in the adviser's Part II of Form ADV.

[262] Since 1985, we have amended sections of Form ADV and added Schedules H and I, but not revised the form in its entirety.

[263] The Commission staff chose a fifteen-year amortization period to reflect the anticipated period of time that advisers would use the revised form. If the Commission adopts significant revisions to Form ADV within the next fifteen years, the actual collection of information burden may be higher than the estimates contained in this analysis and we would revise the Form ADV collection of information burden accordingly.

[264] (8,100 current registrants × 22) + (1,000 new applicants × 22) = 178,200 + 22,000 = 200,200 hours. The revised collection of information

Continued

Amortizing this total burden imposed by Form ADV over a fifteen-year period would result in an average burden increase of an estimated 13,346.67 hours per year,[265] or 1.47 hours per year for each new applicant and for each adviser currently registered with the Commission that would re-file through the IARD.[266]

In addition, during the first year the IARD is operational, advisers filing through the system would likely amend their Form ADV at least once.[267] Electronic filing, however, should yield significant benefits to advisers filing amendments, and is estimated to reduce the information collection burden of filing an amendment to Form ADV by approximately thirty percent. The collection of information burden for amendments therefore would be 0.75 hours per amendment.[268] Based on the Commission's experience in processing investment adviser amendments, new registrants are estimated to amend their Form ADV once in the first year they are registered, currently-registered newly-formed advisers relying on the exemption found at rule 203A–2(d)[269] are estimated to amend their Form ADV twice per year, currently-registered advisers relying on the multi-state exemption found at rule 203A–2(e)[270] are estimated to amend their Form ADV once per year, and other currently-registered advisers are estimated to amend their Form ADV, on average, 1.5 times per year. Advisers thus file an estimated total of 13,250[271] amendments per year for an estimated total paperwork burden of 9,938 hours per year.[272]

The total collection of information burden for advisers to file and complete the revised Form ADV therefore would be approximately 23,315 hours per year.[273] The total collection of information burden therefore would be 27,018 hours.[274]

Rule 206(4)–4; Schedule I to Form ADV

The collection of information requirements for both rule 206(4)–4 and Schedule I to Form ADV would be incorporated in the collection of information requirements for Form ADV, discussed above. The new burden estimate for Form ADV includes these collection of information burdens. Rule 206(4)–4 and Schedule I to Form ADV currently contain collection of information requirements. Rule 206(4)–4 requires advisers to disclose certain disciplinary and financial information to clients. Advisers file Schedule I to Form ADV to claim eligibility for SEC registration (if applying for SEC registration) or to reaffirm their eligibility for SEC registration (if currently registered). These collections of information are found at 17 CFR 275.206(4)–4 and 17 CFR 279.1, are mandatory, and responses are not kept confidential.

We are proposing to rescind rule 206(4)–4 and incorporate its substantive provisions into Part 2A of Form ADV. We also are proposing to incorporate the substantive requirements of Schedule I into Part 1A of Form ADV. The collection of information requirements for rule 206(4)–4 and Schedule I to Form ADV would be eliminated.

Form ADV–W and Rule 203–2

Form ADV–W and Rule 203–2 contain collection of information requirements. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W. This collection of information is found at 17 CFR 275.203–2 and 17 CFR 279.2 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with the Commission once the transition period to electronic filing is complete.

A decrease in the number of advisers filing to withdraw from SEC registration will decrease the current burden. The currently approved collection of information is one hour. The Commission in the past received approximately 616 notices of withdrawal on Form ADV–W per year. The weighted average burden hours for completing Form ADV–W is one hour, and the total annual burden hours currently approved by OMB for this form are 616 hours. Based on the Commission's recent experience in processing investment adviser withdrawals, the Commission estimates that approximately 1,300 withdraw from SEC registration each year, decreasing the total burden by 684 hours.[275]

The Commission is proposing to amend rule 203–2 to (a) require advisers to file Form ADV–W through the IARD and (b) make investment adviser withdrawals effective upon filing (rather than after a sixty-day period, as provided in the current rule). The Commission also is proposing to amend Form ADV–W. The proposed form amendments would tailor the required items to the reason for the adviser's withdrawal. An adviser ceasing operations would complete the entire form to withdraw from all jurisdictions in which it is registered (full withdrawal), while an adviser withdrawing from some, but not all, of the jurisdictions in which it is registered would omit certain items that we do not need from an adviser continuing in business as a state-registered adviser.[276]

The proposed amendments to Form ADV–W are expected to reduce the collection of information burden for advisers filing for withdrawal. An adviser filing for partial withdrawal (e.g., the adviser is switching to state registration) would omit certain items, such as the location of its books and records that we do not need from an adviser continuing in business as a state-registered adviser; an adviser filing for full withdrawal (i.e., the adviser is ceasing operations) would complete the entire form. For purposes of this Paperwork Reduction Act analysis, the Commission staff estimates that approximately 50 percent of the advisers filing for withdrawal would file for full withdrawal and the remaining 50 percent would file for partial withdrawal. Compliance with the requirement to complete Form ADV–W would impose a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. The weighted average total time for each applicant to complete revised Form ADV–W therefore is

estimate includes the burdens of rule 206(4)–4 and Schedule I to Form ADV in addition to the other collection of information imposed by the proposed form.

[265] 200,200 hours/15 years = 13,346.67. An amortization period of less than fifteen years would yield a higher collection of information burden. For example, if the amortization period was ten years instead of fifteen years, the collection of information burden of re-filing Form ADV would be 20,020 burden hours, or 2.2 hours per adviser. (200,200 hours/10 years = 20,020 hours; 20,020 hours/9,100 advisers = 2.2 hours per adviser.)

[266] 13,346.67/9,100 advisers = 1.47 hours per adviser.

[267] *See* discussion of the collection of information burdens for amendments to Form ADV *infra* at notes 268 through 272 and accompanying text.

[268] 1.07 × .70 = .749 hours per amendment.

[269] 17 CFR 275.203A–2(d).

[270] 17 CFR 275.203A–2(e).

[271] (890 new registrants × 1 amendment) + (100 new-applicant newly-formed advisers × 2 amendments) + (10 new-applicant multi-state advisers × 1 amendment) + (8,100 other currently-registered advisers × 1.5 amendments) = 890 + 200 + 10 + 12,150 = 13,250 responses.

[272] 13,250 responses × 0.75 hours = 9,937.5 hours.

[273] 9,938 hours per year attributable to amendments + (1,000 new registrants each year × 1.47 hours (similarly amortized over a fifteen year period)) + (1.47 hours from the continued amortization from the first year the revised form is used × 8,100 advisers) = 9,938 hours + 1,470 hours + 11,907 hours = 23,315 hours.

[274] 23,315 hours due to rulemaking + 3,703 hours due to an increase in the number of advisers = 27,018 total burden hours.

[275] (684 more advisers × 1 hour) = 684 hours.

[276] *See* discussion of Form ADV–W, *supra* Section II.E. of this Release.

estimated to be 0.5 hours (30 minutes), for a total collection of information burden of 650 hours.[277]

Rule 0–2 and Forms 4–R Through 7–R

Rule 0–2 and Forms 4–R, 5–R, 6–R, and 7–R contain collection of information requirements. Rule 0–2 requires non-resident advisers to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Rules 279.4, 279.5, 279.6 and 279.7 (17 CFR 279.4, 279.5, 279.6 and 279.7) designate Forms 4–R through 7–R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed.[278] It is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident advisers and non-resident partners or agents of investment advisers for violations of the federal securities laws. The likely respondents to this information collection would be each non-resident adviser, and each non-resident partner or agent of an SEC-registered adviser.

An increase in the number of non-resident advisers registered with the SEC will increase the current collection of information burden. Forms 4–R through 6–R are required by rule 0–2 to be filed by non-resident advisers, and Form 7–R is required by rule 0–2 to be filed by a non-resident general partner or managing agent of an SEC-registered adviser. The Commission in the past received approximately 300 filings pursuant to rule 0–2. The weighted average burden for Forms 4–R, 5–R, 6–R, and 7–R is one hour per form, and the total annual burden hours currently approved by OMB for these forms is 300 hours. Our records indicate that we receive approximately 475 filings per year from non-resident advisers, partners and agents, increasing the current burden to 475 hours.

The paperwork burdens of Forms 4–R through 6–R are incorporated into the collection of information requirements for Form ADV, discussed above. We are proposing to amend rule 0–2 and delete Forms 4–R, 5–R, 6–R and 7–R. The substance of Forms 4–R through 6–R would be contained in the execution page to Form ADV. The substance of Form 7–R would be contained in new Form AVD–NR. The Commission staff estimates that approximately 380 respondents would be subject to rule 0–2, with approximately 285 respondents being non-resident advisers that would execute Form ADV to comply with rule 0–2.

The remaining approximately 95 respondents are non-resident general partners or managing agents of SEC-registered investment advisers, and would be required to file Form AVD–NR with the Commission. A non-resident general partner or managing agent would be required to file Form AVD–NR only once. SEC staff estimates that the preparation and filing of Form AVD–NR would require approximately one hour of the non-resident general partner's or managing agent's time. The total estimated burden therefore would be 95 hours.

Rule 204–2

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[279] The likely respondents to this collection of information requirement are all advisers registered with the Commission.

A reduction in the number of advisers registered with us will reduce the current burden. Currently, compliance with rule 204–2 requires approximately 195.29 hours each year per Commission-registered adviser, for a total of 1,601,378 burden hours. The current total burden is based on 8,200 potential respondents. Commission records indicate that there currently are approximately 8,100 potential respondents to the collection of information imposed by rule 204–2. As a result of a decrease in the number of advisers registered with the Commission, the total burden is decreased by 19,529.[280]

The proposed amendments to rule 204–2 would require registered investment advisers to prepare and preserve a memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of proposed Form ADV (and presumed to be material), if the event involved the adviser or any of its supervised persons and is not disclosed in the adviser's brochure or a brochure supplement. These books and records will be required to be maintained in the manner, and for the period of time, as other books and records are required to be maintained under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2.

Based on disciplinary items reported on Form ADV, approximately 1,120 advisers currently report disciplinary information. It is anticipated that most of these advisers would include all disciplinary information in their brochure, and approximately ten percent of these advisers, or 110 advisers, would conclude that the materiality presumption is overcome with respect to a legal or disciplinary event, would determine not to disclose that event, and therefore would be required to prepare and preserve a memorandum describing the event. Under the proposed amendments, each respondent would be required to retain the records on an ongoing basis. The proposed amendments to rule 204–2 are estimated to increase the burden by four hours, to 199.29, per Commission-registered adviser that would be required to prepare and preserve these additional records. The annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 thus is estimated to be 1,582,293 total hours.[281] The weighted average burden per Commission-registered adviser would be 195.34 hours.[282]

Rule 204–3

Rule 204–3 contains a collection of information requirement. Rule 204–3, the ''brochure rule,'' currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in

[277] (650 advisers filing for full withdrawal × .75 hours) + (650 advisers filing for partial withdrawal × .25 hours) = 487.5 + 162.5 = 650 hours.

[278] The nature of the adviser's business structure will determine whether it files Form 4–R, 5–R, or 6–R: a non-resident adviser that is an individual or an unincorporated adviser must file Form 4–R; a non-resident adviser that is a corporation must file Form 5–R; a non-resident adviser that is a partnership must file 6–R. A non-resident general files form 7–R partner or a non-resident managing agent of an SEC-registered adviser.

[279] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

[280] (100 fewer advisers × 195.29 hours) = 19,529 hours.

[281] (1,601,382 current burden hours – 19,529 hours due to a decrease in number of advisers) + 440 hours increase from rulemaking=1,582,293 total hours.

[282] 1,582,293 total hours/8,100 advisers = 195.34 hours per adviser.

determining whether to retain, or continue employing, the adviser. Rule 204–3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. Under Rule 204–3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 204–3 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection are every investment adviser registered with the Commission.

A reduction in the number of respondents will reduce the current collection of information burden. The total annual burden currently approved by OMB for rule 204–3 is approximately 203,350 hours for the approximately 8,300 advisers registered with us when the collection of information was last extended. Our records indicate that approximately 8,100 advisers currently are registered with the Commission. The currently approved collection of information estimates that each adviser requires, on average, approximately 24.5 hours to provide its clients with the required information.[283] As a result of a decrease in the number of advisers registered with the Commission, the total burden is decreased by 4,900 hours.[284]

The proposed amendments to rule 204–3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually.[285] The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate.[286] The updates could take the form of a reprinted brochure or a ''sticker'' containing the updated information. Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's annual offer.[287] The rule proposal is necessary for an adviser to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure.

The proposed rule amendments include transition rules that would require each adviser to deliver their revised brochure and any brochure supplements to its current clients. We expect that advisers would send the new brochures and brochure supplements in a ''bulk mailing.'' It is estimated that each adviser has, on average 49 clients and that an adviser requires no more than 0.25 hours to send a package consisting of the adviser's revised brochure and any required brochure supplements to each existing client. The total burden hours for advisers to distribute the revised brochure and any brochure supplements is therefore estimated to be 99,225 hours.[288] The Commission staff estimates that an advisory client engages an adviser for an average of seven years. Amortizing the burden of the initial distribution of the brochure and any brochure supplements over this seven-year period results in an annual collection of information burden of 14,175 hours.

After the initial distribution, an adviser would be required to distribute an update (either a ''sticker'' or a revised brochure or brochure supplement) approximately 2 times per year.[289] This estimate is based on our experience under rule 204–1 and 206(4)–4. It again is estimated that each adviser has an average of 49 clients, and after the adviser distributes a revised brochure and any brochure supplements to their clients, the adviser would require no more than one half hour each time it is required to provide each client with a brochure, a brochure supplement, or an update. This represents about 49 hours per year for each adviser registered with the Commission.[290] Thus, the annual hour burden to meet the requirements of rule 204–3, as proposed to be amended, would be approximately 396,900 hours,[291] not including the initial distribution of the revised brochure and any brochure supplements.

The total estimated collection of information burden imposed by rule 204–3, as proposed to be amended, is 411,075 hours per year.[292]

Rule 203–3 and Form ADV–H

We are proposing one new rule (proposed rule 203–3) and one new form (proposed Form ADV–H) that would contain a collection of information requirement. Rule 203–3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. An adviser requesting a temporary hardship would be required to file Form ADV–H, providing a brief explanation of the nature and extent of the temporary technical difficulties.[293] Form ADV–H would require an adviser requesting a continuing hardship exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.[294] A continuing hardship exemption would be available only to an adviser that is a small entity.[295]

Commission records indicate that approximately 1,500 advisers are small entities and therefore 1,500 potential respondents that could apply for a continuing hardship exemption, and approximately 8,100 potential respondents that could apply for a temporary hardship exemption.[296] Based on our experience with hardship filings made by investment companies through our EDGAR system, approximately 50 advisers would request a temporary hardship exemption and approximately 20 would apply for a continuing hardship exemption each year. Proposed Form ADV–H and rule 203–3 are estimated to create a collection of information burden of approximately 60 minutes per respondent, for a total of 70 hours.[297]

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i)

[283] This estimate assumes that an adviser requires no more than one half hour to distribute its brochure to a client.

[284] (200 fewer advisers × 24.5 hours) = 4,900 hours.

[285] Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A.

[286] *See* proposed rule 204–3(f).

[287] The annual offer, and delivery if the client accepts the offer, is required under current rules 204–3(c)(1) and (4).

[288] (0.25 hours × 49 clients) × 8,100 advisers = 12.25 × 8,100 advisers = 99,225 hours.

[289] The proposed rule amendment providing the transition from paper filings to electronic filings would require each adviser to distribute a revised brochure (and any brochure supplements) to its existing clients within thirty days from the end of the transition period. *See* proposed rule 204–3(i).

[290] 49 clients × .5 hours × 2 distributions per year = 49 hours.

[291] 8,100 advisers × 49 hours = 396,900 hours.

[292] 14,175 hours + 396,900 hours = 411,075 hours.

[293] Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV–H is based on Form TH, which is filed by issuers relying on the temporary hardship exemption.

[294] *See* proposed Form ADV–H. The adviser applying for a continuing hardship exemption also would be required to indicate the reasons that the necessary hardware and software are unavailable, and propose a time period for which the exemption would be in effect.

[295] *See* supra note 61 for the definition of ''small entity.''

[296] A temporary hardship exemption would be available to advisers that submit electronic filings but are temporarily unable to do so. An adviser that receives a continuing hardship exemption could not apply for a temporary hardship exemption.

[297] (50 × 1)+(20 × 1) = 50+20 = 70 hours.

evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–10–00. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 3(a) of the Regulatory Flexibility Act (RFA) [298] regarding the proposed amendments to Form ADV and other rules and forms under the Advisers Act.

A. Reasons for the Proposed Action

As discussed in more detail in the IRFA, and above, we are proposing the rule and form amendments: (i) to facilitate the development of a system of electronic filing by investment advisers; (ii) to develop a database of information about advisers that is easily accessible to investors; and (iii) to improve the quality of disclosure advisers provide to their clients.

B. Objectives

The IRFA explains that the rule proposal has three distinct, but related objectives. The first is to begin the process of creating a more efficient system of regulatory filing for investment advisers. The IARD will reduce regulatory costs for advisers by permitting them to satisfy both state and SEC filing requirements by making a single, electronic filing through the Internet. The IARD will also give us a more effective tool to administer the federal securities laws as they apply to advisers.

The second objective is to improve public access to information about advisers. Currently, adviser filings are generally not available from commercial sources, and not otherwise easily available to investors. In 1996, Congress directed us to pursue this objective by requiring that we establish ''a readily accessible * * * electronic process to receive inquiries * * * involving investment advisers * * *.'' [299] The IARD will satisfy this directive by providing investors with direct access to information about advisers, at no cost, through the Internet. The third objective is to improve the quality of information investors receive from advisers about their fees, business practices and conflicts of interest. Advisers would be required to provide a narrative brochure that is written in plain English, and would be required to keep the brochure current.

To further these objectives, the proposals are designed to make full use of information technologies that are readily available to both large and small advisers. The IRFA explains that the proposed amendments also are designed to further our mandate under the federal securities laws to prevent fraud and require full disclosure of material information by participants in the securities markets.

C. Small Entities Subject to the Rules

In developing these proposals, we have considered their potential effect on small entities that may be affected, which is discussed in the IRFA. The proposals would not affect most advisers that are small entities [300] (small advisers) because they are registered with one or more state securities authorities and not with us. Congress amended the Advisers Act in 1996 so that small advisers are generally regulated by states regulators and not the Commission. [301] Those small advisers that remain registered with us are located in Wyoming (which does not have an advisers statute), or are eligible for an exemption that permits SEC registration. Of the approximately 20,000 advisers in the United States, 8,000 (40%) are registered with us. Of those 8,000, the IRFA estimates that only 1,500 (19%) qualify as small advisers. We have based this estimate on registration information advisers file with the Commission.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The IRFA states that the proposal would impose certain reporting and compliance requirements on small advisers, requiring them: (i) to file electronically through the IARD; (ii) to use amended Form ADV when applying for registration (or amending an existing registration); and (iii) to update and deliver certain information to clients (the ''brochure'' rule). These requirements are discussed more fully in the IRFA and Section II of this Release,[302] and the burdens on small advisers are discussed below.

1. Electronic Filing Requirements

The IRFA explains that electronic filing is likely to impose two types of burdens on small advisers—filing fees and the time and expense of familiarizing themselves with the system.

Filing Fees. The operator of the IARD will charge filing fees to all advisers, including small advisers.[303] Small advisers will pay substantially smaller fees than larger advisers. Use of this sliding scale is designed to minimize the burdens of electronic filing on small advisers while maintaining the economic viability of the IARD. It also recognized that larger advisers, which are more likely to have filing requirements in multiple states, will benefit more from the IARD than small advisers.

Other Burdens. The IRFA explains that use of the IARD will impose other burdens on small advisers that must establish an account with NASDR,

[298] 5 U.S.C. 603(a).

[299] *See supra* note 4.

[300] For purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if (a) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV, (b) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (c) it is not in a control relationship with another investment adviser that is not a small entity. Advisers Act rule 0–7.

[301] *See supra* note 4 (citing amendments to the Advisers Act that divide regulatory authority over investment advisers between the Commission and the states).

[302] Specifically, the electronic filing requirements are discussed *supra* at Section II.B. and C. of this Release; the proposed amendments to Form ADV are discussed *supra* at Section II.D. of this Release; and the proposed information delivery requirements are discussed at Section II.D.2. of this Release.

[303] The rules we are proposing today will not themselves impose or authorize NASDR to impose any filing fee on advisers using the IARD. Section 203A(d) authorizes us to designate an operator of the filing system, and we expect to designate NASDR. The proposal would require advisers to use the system. Nonetheless, we have included the amount of the filing fees we estimate that NASDR will charge as part of our IRFA.

devote time to familiarizing themselves with the IARD's filing rules, and perhaps obtain Internet access. We believe that these burdens are small and that advisers would incur most of the costs when they begin to use the IARD. Thereafter, use of the IARD should actually reduce regulatory burdens for all advisers, including small advisers.

Our information suggests that almost all investment advisers, including small advisers, currently have Internet access, and use the Internet for various purposes.[304] Nonetheless, our proposals would provide for a hardship exemption, available only to small advisers, which would permit them to continue to file on paper if using the IARD would impose an ''unreasonable burden or expense.'' [305] The operator of the IARD would convert the paper filing to electronic format and charge the adviser an additional fee to cover conversion costs. In addition, the IARD will accommodate the use of commercial filing services, which we understand many small advisers currently use to make regulatory filings. We have included these alternative means of making filings to minimize the burdens the proposed electronic filing rules will have on small advisers.

Many small advisers today use filing services because they cannot hire professional compliance staff, and do not themselves have the knowledge, time, or expertise to understand the details of the various federal and state forms, deadlines, and fees. The IARD will have a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. We have written the new instructions in plain English and re-organized the form in a simpler manner. We have re-drafted questions that have presented interpretive difficulties for small advisers, and have added an on-line ''help'' function that will provide advisers with easy access to answers to questions frequently asked about the form. Advisers using the system will also have easy on-line access to the text of the Advisers Act and our rules. Together, these features should substantially benefit small advisers that do not have lawyers or other professional compliance personnel or staff.

The IRFA concludes that, although small advisers will experience some modest start-up costs and burdens in using the IARD, over time the system will actually reduce overall burdens. As advisers become more familiar with it, use of the system should substantially reduce administrative costs associated with making regulatory filings, and improve advisers' compliance with regulatory requirements, allowing them to reduce their dependence, in more routine matters, on lawyers, compliance firms and others who assist them in meeting their regulatory obligations.

2. Proposed Amendments to Form ADV

Part 1. The IRFA explains that the proposed amendments to Part 1A of Form ADV would have a minimal effect on small advisers. None of the new items requests information that should not be readily available to the advisers. For example, advisers would be asked for the e-mail address of a contact person (if she has one) and the address of any web site the adviser sponsors. Further, because small advisers tend to have simpler business arrangements, fewer control persons, and fewer employees, the burdens of completing Part 1A should be significantly less for small advisers than for larger advisers.

The IRFA acknowledges that small advisers whose control persons have disciplinary history would likely spend more resources in completing the necessary DRPs for reporting of disciplinary events. Based on information filed on current Form ADV, we estimate that only approximately fourteen percent of advisers would be required to report disciplinary information, and thus most small advisers would be unaffected by this proposed requirement.[306] Even fewer advisers would be required to report disciplinary events on the revised form—we have proposed to eliminate certain items and limit advisers' reporting obligations to those disciplinary events occurring in the past ten years.

Part 2. The IRFA explains that the proposed amendments to Part 2, because they require advisers to begin preparing and disseminating narrative brochures, will impose additional costs on advisers, including small advisers. The IRFA assumes that all small advisers currently distribute Part II of Form ADV and will have to completely redraft their brochures, although some information in Part II may be transferable to the new brochures.

The costs associated with preparing the new brochures will depend on the size of the adviser, the complexity of its operations, and the extent to which its operations present conflicts of interest with clients. Many of the new items imposing the most rigorous disclosure requirements may not apply to a small adviser because, for example, the adviser does not have soft dollar or directed brokerage arrangements, or does not have custody of client assets. To the extent that some of the new disclosure burdens do apply to small advisers, these advisers are already obligated to make the disclosures to clients under the Act's anti-fraud provisions (although not required to be in the brochure).

The IRFA explains that advisers would, for the first time, be required to prepare and disseminate brochure supplements for their supervised persons. To reduce the burdens on small advisers, we drafted the new supplement rules so that firms with few employees can include the information in their firm brochures and avoid preparing separate brochure supplements.[307]

3. Updating and Delivery Requirements

The IRFA explains that, in addition to proposing revisions to the brochure, we also propose to require advisers to update their brochure, deliver the updates to clients whenever the information becomes materially inaccurate, and offer a revised brochure annually.[308] These proposed requirements would impose some burdens on small advisers. To minimize these burdens, we would permit an adviser to deliver a ''sticker'' containing the updated information instead of requiring the adviser to reprint the entire brochure. In addition, advisers that deliver their brochures in electronic format also may deliver stickers and revised brochures in the same manner.[309] The IRFA states that small advisers are more likely to have fewer advisory clients than larger advisers, and thus the proposed updating and delivery requirements should impose lower variable costs on small advisers.

E. Significant Alternatives

The IRFA discusses the various alternatives that the Commission considered in connection with the proposed rule and form amendments that might minimize the effect on small advisers, including (a) establishing different compliance or reporting requirements or timetables that take into

[304] *See supra* note 57 (discussing advisers' use of the Internet).

[305] *See* Proposed Form ADV–H, *infra* Appendix C of this Release.

[306] The 14% estimate is based on responses to Item 11 of current Form ADV. Item 11 currently includes several items that have an unlimited reporting period and other items that are unnecessary for our registration program.

[307] *See* discussion of proposed part 2B, *supra* Section II.D.2.b. of this Release.

[308] *See* discussion of the proposed delivery and updating requirements, *supra* at Section II.D.2.a. of this Release.

[309] *See* Investment Advisers Act Release No. 1562, *supra* note 123.

account the resources available to small advisers; (b) clarifying, consolidating, or simplifying compliance and reporting requirements under the proposed rule and rule amendments for small advisers; (c) using performance rather than design standards; and (d) exempting small advisers from coverage of all or part of the proposed rule and rule amendments.

Regarding the first alternative, the Commission considered establishing different compliance or reporting requirements for small advisers. As explained more fully in the IRFA, establishing different compliance or reporting requirements would be inconsistent with our mandate to provide a system of public disclosure of investment adviser information. The IRFA states that a small-entity adviser, by the nature of its business, would likely spend fewer resources in completing the new Form ADV, and will pay lower filing fees than those paid by a larger adviser.

Regarding the second alternative, it does not appear that the proposed rule and form amendments can be formatted differently for small advisers and still achieve the stated objectives of the proposal. Nonetheless, the proposed amendments would clarify and simplify the form for all advisers, including small advisers. As discussed more fully in the IRFA, we are also proposing to add a new item to Form ADV to capture specific information about small advisers so we can better assess the number of small advisers registered with us and the burdens imposed by our rules.

Regarding the third alternative, the IRFA explains that the proposed rule and form amendments would permit advisers to use performance rather than design standards in some instances. For example, we do not specify the means by which an adviser would deliver its brochure to clients.[310] In other contexts, however, the use of performance rather than design standards would be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information in a uniform and quantifiable manner so that it is useful to our regulatory and examination programs. Design standards, therefore, are necessary to achieve many objectives of the proposal.

Regarding the fourth alternative, the IRFA states that it would be inconsistent with the purposes of the Advisers Act to exempt small advisers from the proposed rule and form amendments. The information in the adviser's brochure is necessary for the client to evaluate the adviser's background, qualifications and services, and to apprise the client of potential conflicts of interest and of the adviser's financial condition. Clients of small advisers are entitled to the same disclosure required of larger advisers, and exempting small advisers from any of the proposed rule and form amendments would be inconsistent with a central purpose of the Advisers Act. We have incorporated several features intended to minimize the burden on small-entity investment advisers, such as the fact that any adviser with Internet access can file through the IARD, and that the system will have a ''help'' function to assist advisers. Smaller advisers can also apply for a continuing hardship exemption from the electronic filing requirements, as discussed above.

The IRFA states that, having considered the above alternatives in the context of the proposed rule and form amendments, and after taking into account the resources available to small advisers and the potential burden the proposal could place on investment advisers, the alternatives, except as noted above, would not accomplish the stated objectives of the proposal.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small advisers that would be affected by the proposals and the burdens the proposals would impose on small advisers. Commenters are asked to describe the nature of any burden and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IFRA may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549–0506.

VI. Statutory Authority

We are proposing new rule 203–3 under sections 203(c)(1) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–11(a)).

We are proposing amendments to rules 30–5 and 30–11 of our Organization and Program Management rules under sections 4A and 4B of the Securities Exchange Act of 1934 (15 U.S.C. 78d–1 and 78d–2).

We are proposing amendments to rule 0–2 under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 0–7 under chapter 6 of title 5 of the United States Code (particularly section 601 of that chapter (5 U.S.C. 601)) and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

We are proposing amendments to rules 203–1 and 203–2 under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 203A–1 under sections 203A(a)(1)(A), 203A(c), and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)(1)(A), 80b–3a(c), and 80b–11(a)).

We are proposing amendments to rule 203A–2 under section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(c)).

We are proposing amendments to rules 204–1 under sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–4).

We are proposing amendments to rule 204–2 under sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–6(4)).

We are proposing amendments to rule 204–3 under sections 204, 206(4), and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a)).

We are proposing new Form ADV–H under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a) and 78bb(e)(2)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 279.2, Form ADV–W, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to amend rule 279.4, Form 4–R, by replacing it with proposed Form ADV–NR under section

[310] *See* Investment Advisers Act Release No. 1562, *supra* note 123.

19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to withdraw rule 204–5 under section 211(a) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

We are proposing to withdraw rule 206(4)–4 under section 206(4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(4)).

We are proposing to remove and reserve rules 279.5, 279.6 and 279.7 and proposing to remove Forms 5–R, 6–R, and 7–R under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to remove and reserve rule 279.9 and proposing to remove Form ADV–Y2K under section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

List of Subjects

17 CFR Part 200

Administrative practice and procedure; Authority delegations (Government agencies).

17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority section for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. In § 200.30–5, the introductory text of paragraph (e) is revised and paragraph (e)(7) is added to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 to 80b–22):

* * * * *

(7) Pursuant to section 203A(d) of the Act (15 U.S.C. 80b–3a(d)), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions under § 275.203–3 of this chapter.

3. Section 200.30–11 is amended by revising paragraph (b)(2) to read as follows:

§ 200.30–11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

* * * * *

(b) * * *

(2) Under section 203(h) of the Act (15 U.S.C. 80b–3(h)), to authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

4. The general authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

5. Section 275.0–2 is revised to read as follows:

§ 275.0–2 General procedures for serving non-residents.

(a) *General procedures for serving process, pleadings, or other papers on non-resident investment advisers, general partners and managing agents.* Under Forms ADV and ADV–NR (17 CFR 279.1 and 279.4), a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser by serving any or all of its appointed agents:

(1) A person may serve a non-resident investment adviser, non-resident general partner, or non-resident managing agent by furnishing the Commission with one copy of the process, pleadings, or papers, for each named party, and one additional copy for the Commission's records.

(2) If process, pleadings, or other papers are served on the Commission as described in this section, the Secretary of the Commission (Secretary) will promptly forward a copy to each named party by registered or certified mail at that party's last address filed with the Commission.

(3) If the Secretary certifies that the Commission was served with process, pleadings, or other papers pursuant to paragraph (a)(1) of this section and forwarded these documents to a named party pursuant to paragraph (a)(2) of this section, this certification constitutes evidence of service upon that party.

(b) *Definitions.* For purposes of this section:

(1) *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(2) *Non-resident* means:

(i) An individual who resides in any place not subject to the jurisdiction of the United States;

(ii) A corporation that is incorporated in or that has its principal office and place of business in any place not subject to the jurisdiction of the United States; and

(iii) A partnership or other unincorporated organization or association that has its principal office and place of business in any place not subject to the jurisdiction of the United States.

(3) *Principal office and place of business* has the same meaning as in § 275.203A–3(c) of this chapter.

6. In § 275.0–7, the introductory text of paragraph (a) is republished and paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 275.0–7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than $25 million, or such

higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

* * * * *

(b) For purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

(i) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

(ii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

(iii) A person is presumed to control a limited liability company (LLC) if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

(C) Is an elected manager of the LLC.

(iv) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

* * * * *

7. Section 275.203–1 is revised to read as follows:

§ 275.203–1 Application for investment adviser registration.

(a) *Form ADV.* To apply for registration with the Commission as an investment adviser, you must complete and file Form ADV (17 CFR 279.1) by following the instructions in the Form.

(b) *Electronic filing.*

(1) If you apply for registration on or after ___ _, 2000, you must file electronically with the Investment Adviser Registration Depository (IARD), unless you have received a hardship exemption under § 275.203–3.

Note to Paragraph (b): Information on how to file with the IARD is available on our website at <http://www.sec.gov/__.

(2) Until the IARD begins to accept Part 2A of Form ADV (the brochure), you are not required to submit Part 2A with the Commission. Instead, you must maintain a copy of each amended form of brochure you use and provide it to SEC staff upon request. The brochure you maintain is considered filed with the Commission. We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD.

(c) *When filed.* Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

(d) *Filing fees.* You must pay NASD Regulation, Inc. (NASDR) (the operator of the IARD) a filing fee, the amount of which is provided in the instructions to Form ADV, no portion of which is refundable. Your completed application for registration will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

8. Section 275.203–2 is revised to read as follows:

§ 275.203–2 Withdrawal from investment adviser registration.

(a) *Form ADV–W.* You must file Form ADV–W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

(b) *Electronic filing.* Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV–W you file must be filed with the IARD, unless you have received a hardship exemption under § 275.203–3.

(c) *Effective date—upon filing.* Each Form ADV–W filed under this section is effective upon acceptance by the IARD.

(d) *Filing fees.* You do not have to pay a fee to file Form ADV-W on the IARD.

(e) *Form ADV–W is a report.* Each Form ADV–W required to be filed under this section is a ''report'' within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b–4 and 80b–7).

9. Section 275.203–3 is added to read as follows:

§ 275.203–3 Hardship exemptions.

This section provides two ''hardship exemptions'' from the requirement to make Advisers Act filings electronically.

(a) *Temporary hardship exemption.*

(1) *Eligibility for exemption.* If you are registered with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

(2) *Application procedures.* To request a temporary hardship exemption, you must:

(i) File Form ADV–H (17 CFR 279.3) in paper format with NASD Regulation, Inc. (NASDR) no later than one business day after the filing that is the subject of the ADV–H was due; and

(ii) Submit the filing that is the subject of the Form ADV–H in electronic format to NASDR no later than seven business days after the filing was due.

(3) *Effective date—upon filing.* The temporary hardship exemption will be granted when you file a completed Form ADV–H with NASDR.

(b) *Continuing hardship exemption.*

(1) *Eligibility for exemption.* If you are a ''small business'' (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption. The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures.* To apply for a continuing hardship exemption, you must file Form ADV–H with NASDR at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after filing Form ADV–H.

(3) *Effective date—upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to NASDR in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business.* You are a ''small business'' for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked ''no'' to each question in Item 12 that you were required to answer.

Note to Paragraphs (a) and (b): NASDR will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

10. Section 275.203A–1 is revised to read as follows:

§ 275.203A–1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration.*

(1) *Threshold for SEC registration—$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment

adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least $30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(2) *Exemption for investment advisers having between $25 and $30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least $25,000,000 but less than $30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64); or

(ii) You are eligible for an exemption described in § 275.203A–2 of this chapter.

Note to Paragraphs (a)(1) and (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between $25 and $30 million of assets under management.

(b) *Switching to or from SEC registration.*

(1) *State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you have at least $30 million of assets under management.

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you no longer have $25 million of assets under management (or are not otherwise eligible for SEC registration), you must file Form ADV–W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then have at least $25 million of assets under management or are otherwise eligible for SEC registration). During this period while you are registered with both the Commission and one or more State securities authorities, the Investment Advisers Act of 1940 and applicable State law will apply to your advisory activities.

11. Section 275.203A–2 is amended as follows:

a. The introductory text is republished;

b. In paragraph (b)(3), the phrase ''Schedule I'' is revised to read ''an annual updating amendment'';

c. The introductory text to paragraph (d) is republished;

d. Paragraphs (d)(2) and (d)(3) are revised;

e. The introductory text to paragraph (e) is republished; and

f. Paragraphs (e)(2), (e)(3) and (e)(4) are revised to read as follows:

§ 275.203A–2 Exemptions from prohibition on SEC registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) does not apply to:

* * * * *

(d) *Investment advisers expecting to be eligible for SEC registration within 120 Days.* An investment adviser that:

* * * * *

(2) Indicates on Schedule D of its Form ADV (17 CFR 279.1) that it will withdraw from registration with the Commission if, on the 120th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) from registering with the Commission; and

(3) Notwithstanding § 275.203A–1(b)(2) of this chapter, files a completed Form ADV–W (17 CFR 279.2) withdrawing from registration with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective.

(e) Multi-state investment advisers. An investment adviser that:

* * * * *

(2) Indicates on Schedule D of its Form ADV that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the State securities authorities in the respective States or, in the case of an amendment to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the State securities authorities in the respective States, within 90 days prior to the date of filing Form ADV;

(3) Undertakes on Schedule D of its Form ADV to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) from registering with the Commission, by filing a completed Form ADV–W within 180 days of the adviser's fiscal year end (unless the adviser then has at least $25 million of assets under management or are otherwise eligible for SEC registration); and

(4) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

12. Section 275.204–1 is revised to read as follows:

§ 275.204–1 Amendments to application for registration.

(a) *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

(1) At least annually, within 90 days of the end of your fiscal year; and

(2) More frequently, if required by the instructions to Form ADV.

(b) *Electronic filing.*

(1) If you are an investment adviser registered with the Commission on_____ __, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on ____ __, 2000) with the Investment Adviser Registration Depository (IARD) as follows:

(i) _____ must file no later than _____;

(ii) _____ must file no later than _____;

(iii) _____ must file no later than _____; and

(iv) _____ must file no later than _____.

Note to Paragraphs (a) and (b): Information on how to file with the IARD is available on our website at <http://www.sec.gov/____>.

(2) If you are an investment adviser with a pending registration application on_____ __, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on _____ __, 2000) with the IARD by (date used in paragraph (b)(1)(iv)).

(3) If you have received a hardship exemption under § 275.203–3, you must file a completed Part 1A of Form ADV on paper with NASD Regulation, Inc. (NASDR) when you are required to

amend your Form ADV by the schedule in paragraph (b)(1) of this section.

(4) If you have filed Part 1A of Form ADV with the IARD under paragraphs (b)(1) or (b)(2) of this section, you must file all subsequent amendments to your Form ADV with the IARD.

(c) *Special rule for part 2.* When resubmitting Form ADV in accordance with paragraph (b) of this section, you are not required to submit Part 2A of Form ADV (the firm brochure). Until the IARD begins to accept Part 2A of Form ADV, you must maintain a copy of each amended form of your firm brochure you use and provide it to SEC staff upon request. The firm brochure you maintain is considered filed with the Commission. We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD. You are not required to file Part 2B of Form ADV (the brochure supplements) with the Commission.

Note to Paragraph (c): You are required by § 204–3(i) to begin using your new firm brochure and all required brochure supplements by (date used in paragraph (b)(1)(iv)), and to deliver your new firm brochure and all required brochure supplements to each of your current advisory clients by (30 days after the date in paragraph (b)(1)(iv)).

(d) *Filing fees.* You must pay NASDR (the operator of the IARD) an annual filing fee at the time you file your annual updating amendment, no portion of which is refundable. The filing fees are provided in the instructions to Form ADV. Your amended Form ADV will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Amendments to Form ADV are reports.* Each amendment required to be filed under this section is a ''report'' within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b–4 and 80b–7).

13. Section 275.204–2 is amended by revising paragraph (a)(14) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(14)(i) A copy of each written statement, and each amendment or revision to the written statement, given or sent to any advisory client or prospective client as required by Rule 204–3 under the Act; any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and a record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in paragraph (a)(14)(i) of this section. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items.

* * * * *

14. Section 275.204–3 is revised to read as follows:

§ 275.204–3 Delivery of firm brochures and brochure supplements.

(a) *General requirements.* If you are registered under the Act as an investment adviser, you must offer and deliver a firm brochure and one or more supplements to each client or prospective client as required by this section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV (17 CFR 279.1).

(b) *Offer and delivery requirements.* (1) You (or a supervised person acting on your behalf) must deliver to a client or prospective client:

(i) Your current brochure before or at the time you enter into a written or oral investment advisory contract with the client, and

(ii) A current brochure supplement for a supervised person before or at the time that supervised person begins to provide advisory services to the client. For purposes of this section, a supervised person will provide advisory services to a client if the supervised person will:

(A) Regularly communicate investment advice to that client, or

(B) Formulate investment advice for assets of that client, or make discretionary investment decisions for assets of that client.

(2) At least once a year, you must deliver or offer each advisory client a copy of your current brochure and any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section. Your offer must be in writing. If a client accepts your offer, you must send the current brochure and supplements to that client, without charge, within seven days after you are notified of the acceptance.

(c) *Exceptions to delivery requirement.* (1) You are not required to deliver a brochure or brochure supplement when you enter into an investment company contract.

(2) You are not required to deliver a brochure supplement when you enter into a contract for impersonal investment advice. Further, if you charge less than $500 per year under that contract, you are not required to deliver a brochure when you enter into the contract.

(d) *Delivery to limited partners.* If, as an adviser, you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a ''limited partnership.''

(e) *Wrap fee program brochures.*

(1) If you are a sponsor of a wrap fee program, then the brochure that paragraph (b)(1)(i) of this section requires you to deliver to a client or prospective client of the wrap fee program must be a wrap fee brochure containing all information required by Part 2A Appendix 1 of Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that you sponsor.

(2) You do not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information your wrap fee program brochure must contain.

Note to paragraph (e): A wrap fee brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section.

(f) *Updates and amendments.* You must amend your brochure and any brochure supplement and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating instructions that you must follow.

(g) *Multiple brochures.* If you provide substantially different advisory services to different clients, you may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure you deliver to an advisory client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will

provide or charge, or that you propose to provide or charge, to that client.

(h) *Other disclosure obligations.* Delivering a brochure or supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or State laws or regulations.

(i) *Transition rule.* (1) By (date used in rule 204–1(b)(1)(iv)), you must begin using your current brochure and all required brochure supplements to comply with this section.

(2) By (30 days after the date used in rule 204–1(b)(1)(iv)), you must deliver to each of your advisory clients your current brochure and all required brochure supplements.

(j) *Definitions.* For purposes of this section:

(1) *Contract for impersonal investment advice* means a contract for investment advisory services that does not purport to meet the objectives or needs of specific individuals or accounts.

(2) *Current brochure* and *current brochure supplement* mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (*i.e.*, stickers).

(3) *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64) that meets the requirements of section 15(c) of that Act (15 U.S.C. 80a–15(c)).

(4) *Sponsor* of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(5) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(6) *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

§ 275.204–5 [Removed and Reserved]

15. Section 275.204–5 is removed and reserved.

§ 275.206(4)–4 [Removed and Reserved]

16. Section 275.206(4)–4 is removed and reserved.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

17. The authority citation for Part 279 is revised to read as follows:

Authority: 15 U.S.C. 80b–1 to 80b–22.

18. Form ADV (referenced in § 279.1) is revised.

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations. Form ADV is attached as Appendix A.

19. Form ADV–W (referenced in § 279.2) is revised.

Note: The text of Form ADV–W does not and the amendments will not appear in the Code of Federal Regulations. Form ADV–W is attached as Appendix B.

20. Section 279.3 and Form ADV–H are added as follows.

Note: The text of Form ADV–H will not appear in the Code of Federal Regulations. Form ADV–H is attached as Appendix C.

§ 279.3 Form ADV–H, application for a temporary or continuing hardship exemption.

An investment adviser must file this form under § 275.203–3 of this chapter to request a temporary hardship exemption or apply for a continuing hardship exemption.

21. Form 4–R (referenced in § 279.4) is removed.

22. Section 279.4 is revised and Form ADV–NR is added as follows:

Note: Form ADV–NR will not appear in the Code of Federal Regulations. Form ADV–NR is attached as Appendix D.

§ 279.4 Form ADV–NR, appointment of agent for service of process by non-resident general partner and non-resident managing agent of an investment adviser.

Each non-resident general partner or managing agent of an investment adviser must file this form under § 275.0–2 of this chapter.

§ 279.5 [Removed and Reserved]

23. Section 279.5 and Form 5–R are removed and reserved.

Note: Form 5–R does not appear in the Code of Federal Regulations.

§ 279.6 [Removed and Reserved]

24. Section 279.6 and Form 6–R are removed and reserved.

Note: Form 6–R does not appear in the Code of Federal Regulations.

§ 279.7 [Removed and Reserved]

25. Section 279.7 and Form 7–R are removed and reserved.

Note: Form 7–R does not appear in the Code of Federal Regulations.

§ 279.9 [Removed and Reserved]

26. Section 279.9 and Form ADV–Y2K are removed and reserved.

Note: Form ADV–Y2K does not appear in the Code of Federal Regulations.

By the Commission.

Dated: April 5, 2000.

Margaret H. McFarland,

Deputy Secretary.

(Note: Appendixes A, B, C, and D will not appear in the Code of Federal Registration)

Appendix A—Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Form ADV: General Instructions

Read these instructions carefully before filing Form ADV. Failure to follow these instructions, properly complete the form, and pay all required fees may result in your filing being returned to you. Electronic filers should follow the instructions available on-line, which are different.

In these instructions and in the form, ''you'' means the investment adviser (i.e., the advisory firm) applying for registration or amending its registration. If you are a ''separately identifiable department or division'' (SID) of a bank, ''you'' means the SID, rather than your bank, unless the instructions or the form provide otherwise. Terms that appear in *italics* are defined in the Glossary of Terms to Form ADV.

1. What is Form ADV used for?

Investment advisers use Form ADV to:

- Register with the Securities and Exchange Commission.
- Register with one or more *state securities authorities.*
- Amend those registrations.

Form ADV also contains the requirements for the *brochure* you must deliver to *clients* under SEC rule 204–3 and similar state rules.

2. How is Form ADV organized?

Form ADV contains four parts:

- Part 1A asks a number of questions about you, your business practices, the *persons* who own and *control* you, and the *persons* who provide investment advice on your behalf. All advisers registering with the SEC or any of the *state securities authorities* must complete Part 1A.

Part 1A also contains several schedules that supplement Part 1A. The items of Part 1A let you know which schedules you must complete.

- Schedule A asks for information about your direct owners and executive officers.
- Schedule B asks for information about your indirect owners.
- Schedule C is used by paper filers to update the information required by Schedules A and B (see Instruction 13).

• Schedule D asks for additional information for certain items in Part 1A.

• Disclosure Reporting Pages (or ''DRPs'') ask for details about disciplinary events involving you or *persons* affiliated with you. (These are considered schedules too.)

• Part 1B asks additional questions required by *state securities authorities*. Part 1B contains three DRPs. If you are applying for registration or are registered only with the SEC, you do not have to complete Part 1B. (If you are filing electronically and you do not have to complete Part 1B, you will not see Part 1B.)

• Part 2A contains the requirements for preparing the *brochure* that SEC rule 204–3 and similar state rules require you to deliver to your *clients*. The *brochure* provides information about your business practices, fees and any conflicts of interest you may have with your *clients*. If you *sponsor wrap fee programs*, you must create a separate *brochure* that discloses information about these programs. Appendix 1 to Part 2 contains the requirements for preparing a *wrap fee program brochure*. Instructions to Part 2A explain when a *brochure* must be delivered.

• Part 2B contains the requirements for preparing *brochure* supplements about your *supervised persons*. Instructions to Part 2B explain for which *supervised persons* you must prepare a supplement and to which *clients* you must deliver the supplement.

3. When am I required to update my Form ADV?

You must amend your Form ADV annually by filing an *annual updating amendment* within 90 days after the end of your fiscal year. When you submit your *annual updating* amendment, you must update your responses to all items.

In addition to your *annual updating amendment,* you must amend your Form ADV by filing additional amendments (other-than-annual amendments) *promptly* if:

• information you provided in response to Items 1, 3, 9, or 11 of Part 1A or Items 1, 2.A.–2.F., or 2.I. of Part 1B become inaccurate in any way;

• information you provided in response to Items 4, 7, 8, or 10 of Part 1A or Item 2.G. of Part 1B become *materially* inaccurate; or

• any information in Part 2 (your *brochure* or a *brochure* supplement) becomes *materially* inaccurate.

If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, or 12 of Part 1A or Items 2.H. or 2.J. of Part 1B even if your responses to those items have become inaccurate. You must update your responses to all other items in Part 1 whenever you amend your Form ADV.

Failure to update your Form ADV, as required by this instruction, is a violation of SEC rule 204–1 and similar state rules and could lead to your registration being revoked.

4. Where do I sign my Form ADV application or amendment?

You must sign the appropriate Execution Page. There are three Execution Pages at the end of the form. Your initial application and all amendments to Form ADV must include at least one Execution Page.

• If you are applying for or amending your SEC registration, you must sign and submit either a:

• Domestic Investment Adviser Execution Page, if you (the advisory firm) are a resident of the United States; or

• *Non-Resident* Investment Adviser Execution Page, if you (the advisory firm) are not a resident of the United States.

• If you are applying for or amending your registration with a *state securities authority,* you must sign and submit the State-Registered Investment Adviser Execution Page.

5. Who must sign my Form ADV or amendment?

The individual who signs the form depends upon your form of organization:

• For a sole proprietorship, the sole proprietor.

• For a partnership, a general partner.

• For a corporation, an authorized principal officer.

• For a ''separately identifiable department or division'' (SID) of a bank, a principal officer of your bank who is directly engaged in the management, direction or supervision of your investment advisory activities.

• For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized.

6. How do I file my Form ADV?

Until [completion date of transition to electronic filing in rule 204–1(b)(i)(D)], you must follow the instructions in [transition instructions that will be included with the adopting release for Form ADV] to determine how you should file. After [date in rule 204–1(b)(i)(D)], follow this Instruction 6.

Complete Form ADV electronically using the Investment Adviser Registration Depository (IARD) if:

• You are filing with the SEC (and submitting *notice filings* to any of the *state securities authorities*), or

• You are filing with a *state securities authority* that requires or permits advisers to submit Form ADV through the IARD.

Complete Form ADV (Paper Version) on paper if:

• You are filing with the SEC or a *state securities authority* that requires electronic filing, but you have been granted a continuing hardship exemption. Hardship exemptions are described in Instruction 12.

• You are filing with a *state securities authority* that permits (but does not require) electronic filing and you do not file electronically.

7. How do I get started filing electronically?

There are two things you must do to get started filing electronically:

• You must request a user I.D. code and password by completing and submitting Form ADV–ID to NASDR. You can get a copy of Form ADV–ID from any of the following web sites: <www.sec.gov>, <www.nasaa.org>, and <www.nasdr.com>. Form ADV–ID must be submitted on paper. Mail the form to [address] or fax it to [fax number].

• You must establish an IARD account with NASDR, from which the IARD will deduct filing fees and any *state* fees you are required to pay. If you have a *CRD* account with NASDR, you do not need to establish a separate IARD account. To establish an IARD account, [to be determined].

Once you receive your user I.D. and password and you have an account, you are ready to file electronically.

8. If I am applying for registration with the SEC, or amending my SEC registration, how do I make *notice filings* with the *state securities authorities*?

If you are applying for registration with the SEC or amending your SEC registration, the *state securities authorities* of states in which you are ''doing business'' may require you to provide them with copies of your SEC filings. We call these filings ''*notice filings*.'' Your *notice filings* will be sent electronically to the *states* that you check on Item 2.B. of Part 1A. The *state securities authorities* to which you send *notice filings* may charge fees, which will be deducted from the account you establish with NASDR. To determine which *state securities authorities* require SEC-registered advisers to submit *notice filings* and to pay fees, consult the investment adviser law or the *state securities authority* for the particular state in which you are ''doing business.'' See General Instruction 15.

If you are granted a continuing hardship exemption to file Form ADV on paper, NASDR will enter your filing into the IARD and your *notice filings* will be sent electronically to the *state securities authorities* that you check on Item 2.B. of Part 1A.

9. I am registered with a *state*. When must I switch to SEC registration?

If you report on your *annual updating amendment* that your assets under management have increased to $30 million or more, you must register with the SEC within 90 days after you file that *annual updating amendment*. If your assets under management increase to $25 million or more but not $30 million, you may, but are not required to, register with the SEC (assuming you are not otherwise required to register with the SEC). Once you register with the SEC, you are subject to SEC regulation, regardless of whether you remain registered with one or more *states*. Each of your *investment adviser representatives*, however, may be subject to registration in those states in which the representative has a place of business. See SEC rule 203A–1(b). For additional information, consult the investment adviser laws or the *state securities authority* for the particular state in which you are ''doing business.'' See General Instruction 15.

10. I am registered with the SEC. When must I switch to registration with a *state securities authority*?

If you report on your *annual updating amendment* that you have assets under management of less than $25 million *and* you are not otherwise eligible to register with the SEC, you must withdraw from SEC

registration within 180 days after the end of your fiscal year by filing Form ADV–W. You should consult state law in the states that you are doing business to determine if you are required to register in these states. See General Instruction 15. Until you file your Form ADV–W with the SEC, you will remain subject to SEC regulation, and you also will be subject to regulation in any states where you register. See SEC rule 203A–1(b).

11. Are there filing fees?

Yes. These fees go to support and maintain the IARD. The IARD filing fees are in addition to any registration or other fee that may be required by state law. You must pay an IARD filing fee for your initial application and each *annual updating amendment.* There is no filing fee for an other-than-annual amendment or Form ADV–W. The IARD filing fee schedule is as follows:

[to be determined]

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 12), you are required to pay an additional fee. The amount of the additional fee depends on the type of filing you are submitting. The hardship filing fee schedule is as follows:

[to be determined]

12. What if I am not able to file electronically?

If you cannot file electronically, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

• A **temporary hardship exemption** is available if you file electronically, but you encounter unexpected difficulties that prevent you from making a timely filing with the IARD, such as a computer malfunction or electrical outage. This exemption does *not* permit you to file on paper; instead, it extends the deadline for an electronic filing for seven business days. See SEC rule 203–3(a).

• A **continuing hardship exemption** may be granted if you are a small business and you can demonstrate that filing electronically would impose an undue hardship. You are a small business, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A (because you have assets under management of less than $25 million) *and* you are able to respond ''no'' to each question in Item 12. See SEC rule 0–7.

If you have been granted a continuing hardship exemption, you must complete and file the paper version of Form ADV with NASDR. NASDR will enter your responses into the IARD. As discussed in General Instruction 11, NASDR will charge you a fee to reimburse it for the expense of data entry.

Before applying for a continuing hardship exemption, consider engaging a firm that assists investment advisers in making filings with the IARD. Check the SEC's web site to obtain a list of firms that provide these services.

13. I am eligible to file on paper. How do I make a paper filing?

When filing on paper, you must:

• Type all of your responses.

• Include your name (the same name you provide in response to Item 1.A. of Part 1A) and the date on every page.

• If you are amending your Form ADV:

• complete page 1 and circle the number of any item for which you are changing your response.

• include your SEC 801–number (if you have one) and your *CRD* number (if you have one) on every page.

• complete the amended item in full and circle the number of the item for which you are changing your response.

• to amend Schedule A or Schedule B, complete and submit Schedule C.

Where you submit your paper filing depends on why you are eligible to file on paper:

• If you are filing on paper because you have been granted a continuing hardship exemption, submit one manually signed Form ADV and one copy to: NASD Regulation, Inc., [address to be determined].

If you complete Form ADV on paper and submit it to NASDR but you do not have a continuing hardship exemption, the submission will be returned to you.

• If you are filing on paper because a *state* in which you are registered or applying for registration allows you to submit paper instead of electronic filings, submit one manually signed Form ADV and one copy to the appropriate *state securities authorities.*

14. Who is required to file Form ADV–NR?

Every *non-resident* general partner and *managing agent* of *all* SEC-registered advisers, whether or not the adviser is resident in the United States, must file Form ADV–NR in connection with the adviser's initial application. A general partner or *managing agent* of an SEC-registered adviser who becomes a *non-resident* after the adviser's initial application has been submitted must file Form ADV–NR within 30 days. Form ADV–NR must be filed on paper (it cannot be filed electronically).

Submit Form ADV–NR to the SEC at the following address: Securities and Exchange Commission, [address to be determined].

Failure to file Form ADV–NR promptly may delay SEC consideration of your initial application.

15. Where can I get additional information?

The SEC provides additional information about its rules and the Advisers Act on its website: <www.sec.gov>.

NASAA provides additional information about state investment adviser laws and state rules, and how to contact a *state securities authority,* on its website: <www.nassa.org>.

Federal Information Law and Requirements

Advisers Act Sections 203(c), 204, 206 and 211(a) authorize the SEC to collect the information required by Form ADV. The SEC uses the information for regulatory purposes, including deciding whether to grant registration. The SEC keeps files of the information submitted on this form and makes the information publicly available. The SEC may reject forms that do not include required information. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. § 1001 and 15 U.S.C. § 80b–17.

SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Advisers Act authorizes the SEC to collect the information on Form ADV from applicants. See 15 U.S.C. §§ 80b–3(c)(1) and 80b–4. Filing the form is mandatory.

The main purpose of this form is to enable the SEC to register investment advisers. Every applicant for registration with the SEC as an adviser must file the form. See 17 C.F.R. § 275.203–1. The form is filed annually by every adviser, no later than 90 days after the end of its fiscal year, to amend its registration. It also is filed promptly during the year to reflect material changes. See 17 C.F.R. § 275.204–1. The SEC maintains the information on the form and makes it publicly available through the IARD.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

Form ADV (Paper Version); Unifrom Application for Investment Adviser Registration

Form ADV: Instructions for Part 1A

These instructions explain how to complete certain items in Part 1A of Form ADV.

1. Item 1: Identifying Information

If you are a ''separately identifiable department or division'' (SID) of a bank, answer Item 1.A. with the full legal name of your bank, and answer Item 1.B. with your own name (the name of the department or division) and all names under which you conduct your advisory business. In addition, your *principal office and place of business* in Item 1.F. should be the principal office at which you conduct your advisory business. In response to Item 1.I., the World Wide Web site addresses you list on Schedule D should be sites that provide information about your advisory business, rather than general information about your bank.

2. Item 2: SEC Registration

If you are registered or applying for registration with the SEC, you must indicate in Item 2.A. why you are eligible to register with the SEC by checking one or more boxes.

a. **Item 2.A(1): Adviser with Assets Under Management of $25 Million or More.** You may check box 1 *only* if your response to Item 5.F(2)(c) is $25 million or more. While you *may* register with the SEC if your assets under management are at least $25 million but less than $30 million, you *must* register

with the SEC if your assets under management are $30 million or more. Part 1A Instruction 5.b. explains how to calculate your assets under management.

If you are a state-registered adviser and you report on your *annual updating amendment* that your assets under management increased to $25 million or more, you *may* register with the SEC. If your assets under management increased to $30 million or more, you *must* register with the SEC within 90 days after you file that *annual updating amendment*. See SEC rule 203A–1(b) and Form ADV General Instruction 9.

b. **Item 2.A(4): Adviser to an Investment Company.** You may check box 4 *only* if you currently provide advisory services under an investment advisory contract to an investment company registered under the Investment Company Act of 1940 and the investment company is operational (*i.e.,* has assets and shareholders, other than just the organizing shareholders). See section 203A(a)(1)(B) of the Advisers Act. Advising investors about the merits of investing in mutual funds or recommending particular mutual funds does not make you eligible to check this box.

c. **Item 2.A(5): Nationally Recognized Statistical Rating Organization.** You may check box 5 *only* if you are designated as a nationally recognized statistical rating organization pursuant to an application filed under paragraph (c)(13)(i) of SEC rule 15c3–1 under the Securities Exchange Act of 1934. See SEC rule 203A–2(a). This designation generally is limited to rating agencies, such as Moody's and Standard & Poor's.

d. **Item 2.A(6): Pension Consultant.** You may check box 6 *only* if you are eligible for the pension consultant exemption from the prohibition on SEC registration.

• You are eligible for this exemption if you provided investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of $50 million or more during the 12-month period that ended within 90 days of filing this Form ADV. You are *not* eligible for this exemption if you only advise *clients* on allocating their investments within their pension plans. See SEC rule 203A–2(b).

• To calculate the value of assets for purposes of this exemption, aggregate the assets of the plans for which you provided advisory services at the end of the 12-month period. If you provided advisory services to other plans during the 12-month period, but your employment or contract terminated before the end of the 12-month period, you also may include the value of those assets.

e. **Item 2.A(7): Affiliated Adviser.** You may check box 7 *only* if you are eligible for the affiliated adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(c). You are eligible for this exemption if you *control,* are *controlled by,* or *are under common control with* an investment adviser that is registered with the SEC, *and* you have the same *principal office and place of business* as that other investment adviser. If you check box 7, you also must complete Section 2.A(7) of Schedule D.

f. **Item 2.A(8): Newly-Formed Adviser.** You may check box 8 *only* if you are eligible for the newly-formed-adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(d). You are eligible for this exemption if:

• Immediately before you file your application for registration with the SEC, you were not registered or required to be registered with the SEC or a *state securities authority; and*

• At the time of your formation, you have a reasonable expectation that within 120 days of registration you will be eligible for SEC registration.

If you check box 8, you also must complete Section 2.A(8) of Schedule D.

You must file an amendment to Part 1A of your Form ADV that updates your response to Item 2.A. within 120 days after the SEC declares your registration effective. You may not check box 8 on your amendment; since this exemption is available only if you are not registered, you may not ''re-rely'' on this exemption. If you indicate on that amendment (by checking box 11) that you are not eligible to register with the SEC, you also must at that same time file a Form ADV–W to withdraw your SEC registration.

g. **Item 2.A(9): Multi-State Adviser.** You may check box 9 *only* if you are eligible for the multi-state adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(e). You are eligible for this exemption if you are required to register as an investment adviser with the securities authorities of 30 or more *states.* If you check box 9, you must complete Section 2.A(9) of Schedule D. You must complete Section 2.A(9) of Schedule D in each *annual updating amendment* you submit.

If you check box 9, you also must:

• Create and maintain a list of the *states* in which, but for this exemption, you would be required to register;

• Update this list each time you submit an *annual updating amendment* in which you continue to represent that you are eligible for this exemption; and

• Maintain the list in an easily accessible place for a period of not less than five years from each date on which you indicate that you are eligible for the exemption.

If, at the time you file your *annual updating amendment,* you are required to register in less than 25 *states* and you are not otherwise eligible to register with the SEC, you must check box 11 in Item 2.A. You also must file a Form ADV–W to withdraw your SEC registration. See Part 1A Instruction 2.h.

h. **Item 2.A(11): Adviser No Longer Eligible to Remain Registered with the SEC.** You *must* check box 11 if:

• You are registered with the SEC;

• You are filing an *annual updating amendment* to Form ADV in which you indicate in response to Item 5.F(2)(c) that you have assets under management of less than $25 million; *and*

• You are not eligible to check any other box (other than box 11) in Item 2.A. (and are therefore no longer eligible to remain registered with the SEC).

You must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV–W. Until you file your Form ADV–W, you will remain subject to SEC regulation, and you also will be subject to regulation in the *states* in which you register. See SEC rule 203A–1(b).

3. Item 3: Form of Organization

If you are a ''separately identifiable department or division'' (SID) of a bank, answer Item 3.A. by checking ''other.'' In the space provided, specify that you are a ''SID of'' and indicate the form of organization of your bank. Answer Items 3.B. and 3.C. with information about your bank.

4. Item 4: Successions

a. **Succession of an SEC-Registered Adviser.** If you (1) have taken over the business of an investment adviser *or* (2) have changed your structure or legal status (*e.g.,* form of organization or state of incorporation), a new organization has been created, which has registration obligations under the Advisers Act. There are different ways to fulfill these obligations. You may rely on the registration provisions discussed in the General Instructions, or you may be able to rely on special registration provisions for ''successors'' to SEC-registered advisers, which may ease the transition to the successor adviser's registration.

To determine if you may rely on these provisions, review ''Registration of Successors to Broker-Dealers and Investment Advisers,'' Investment Advisers Act Release No. 1357 (Dec. 28, 1992). If you have taken over an adviser, follow Part 1A Instruction 4.a(1), Succession by Application. If you have changed your structure or legal status, follow Part 1A Instruction 4.a(2), Succession by Amendment. If either (1) you are a ''separately identifiable department or division'' (SID) of a bank that is currently registered as an investment adviser, and you are taking over your bank's advisory business; or (2) you are a SID currently registered as an investment adviser, and your bank is taking over your advisory business, then follow Part 1A Instruction 4.a(1), Succession by Application.

(1) **Succession by Application.** If you are not registered with the SEC as an adviser, and you are acquiring or assuming substantially all of the assets and liabilities of the advisory business of an SEC-registered adviser, file a new application for registration on Form ADV. You will receive new registration numbers. You must file the new application within 30 days after the succession. On the application, make sure you check ''yes'' to Item 4 and complete Section 4 of Schedule D.

Until the SEC declares your new registration effective, you may rely on the registration of the adviser you are acquiring, but only if the adviser you are acquiring is no longer conducting advisory activities. Once your new registration is effective, a Form ADV–W must be filed with the SEC to withdraw the registration of the acquired adviser.

(2) **Succession by Amendment.** If you are a new investment adviser formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in *control* or management, you may amend the registration of the registered investment adviser to reflect

these changes rather than file a new application. You will keep the same registration numbers, and you should not file a Form ADV–W. On your amendment, make sure you check ''yes'' to Item 4 and complete Section 4 of Schedule D. You must submit the amendment within 30 days after the change or reorganization.

b. **Succession of a State-Registered Adviser.** If you (1) have taken over the business of an investment adviser *or* (2) have changed your structure or legal status (*e.g.,* form of organization or state of incorporation), a new organization has been created, which has registration obligations under state investment adviser laws. There may be different ways to fulfill these obligations. You should contact each state in which you are registered to determine that state's requirements for successor registration. See Form ADV General Instruction 15.

5. Item 5: Information About Your Advisory Business

a. **Newly-Formed Advisers:** Several questions in Item 5 that ask about your advisory business assume that you have been operating your advisory business for some time. Your response to these questions should reflect your current advisory business (i.e., at the time you file your Form ADV), with the following exceptions:

- Base your response to Item 5.E. on the types of compensation you expect to accept;
- Base your response to Item 5.G. on the types of advisory services you expect to provide during the next year; and
- Skip Item 5.H.

b. **Item 5.F: Calculating Your Assets Under Management.** In determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services as of the date of filing this Form ADV.

(1) **Securities Portfolios.** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purposes of this 50% test, you may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities. You may include securities portfolios that are:

(a) Your family or proprietary accounts (unless you are a sole proprietor, in which case your personal assets must be excluded);

(b) Accounts for which you receive no compensation for your services; and

(c) Accounts of *clients* who are not U.S. residents.

(2) **Value of Portfolio.** Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services. If you provide continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only that portion of the securities portfolio for which you provide such services. Exclude, for example, the portion of an account:

(a) Under management by another *person; or*

(b) that consists of real estate or businesses whose operations you ''manage'' on behalf of a *client* but not as an investment.

Do not deduct securities purchased on margin.

(3) **Continuous and Regular Supervisory or Management Services.**

General Criteria. You provide continuous and regular supervisory or management services with respect to an account if:

(a) You have *discretionary authority* over and provide ongoing supervisory or management services with respect to the account; or

(b) You do not have *discretionary authority* over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the *client,* as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the *client,* you are responsible for arranging or effecting the purchase or sale.

Factors. You should consider the following factors in evaluating whether you provide continuous and regular supervisory or management services to an account.

(a) **Terms of the advisory contract.** If you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services for the account. Other provisions in the contract, or your actual management practices, however, may suggest otherwise.

(b) **Form of compensation.** If you are compensated based on the average value of the *client's* assets you manage over a specified period of time, that suggests that you provide continuous and regular supervisory or management services for the account. If you receive compensation in a manner similar to either of the following, that suggests you *do not* provide continuous and regular supervisory or management services for the account —

(i) You are compensated based upon the time spent with a *client* during a *client* visit; or

(ii) You are paid a retainer based on a percentage of assets covered by a financial plan.

(c) **Management practices.** The extent to which you actively manage assets or provide advice bears on whether the services you provide are continuous and regular supervisory or management services. The fact that you make infrequent trades (e.g., based on a ''buy and hold'' strategy) does not mean your services are not ''continuous and regular.''

Examples. You *may* provide continuous and regular supervisory or management services for an account if you:

(a) Have *discretionary authority* to allocate *client* assets among various mutual funds;

(b) Do not have discretionary authority, but provide the same allocation services, and satisfy the criteria set forth in Instruction 5.b(3);

(c) Allocate assets among other managers (a ''manager of managers''), and you have *discretionary authority* to hire and fire managers and reallocate assets among them; or

(d) You are a broker-dealer, and treat the account as a brokerage account, but only if you have *discretionary authority* over the account.

You *do not* provide continuous and regular supervisory or management services for an account if you:

(a) Provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;

(b) Provide only *impersonal investment advice* (e.g., market newsletters);

(c) Make an initial asset allocation, without continuous and regular monitoring and reallocation; or

(d) Provide advice on an intermittent or periodic basis (such as upon client request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).

(4) **Value of Assets Under Management.** Determine your assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV. Determine market value using the same method you used to report account values to *clients* or to calculate fees for investment advisory services.

(5) **Example.** This is an example of the method of determining whether a client account may be included as assets under management.

A *client's* portfolio consists of the following:

$6,000,000	stocks and bonds
1,000,000	cash and cash equivalents
3,000,000	non-securities (collectibles, commodities, real estate, etc.)
10,000,000	Total Assets

First, is the account a securities portfolio? The account is a securities portfolio because securities as well as cash and cash equivalents (which you have chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 5.b(1)).

Second, does the account receive continuous and regular supervisory or management services? The entire account is managed on a *discretionary* basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 5.b(3)).

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser's total assets under management.

6. Item 10: *Control Persons*

If you are a ''separately identifiable department or division'' (SID) of a bank, identify on Schedule A your bank's executive officers who are directly engaged in managing, directing, or supervising your investment advisory activities, and list any other *persons* designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities, including supervising employees performing investment advisory activities.

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Form ADV: Instructions for Part 1B

These instructions explain how to complete certain items in Part 1B of Form ADV.

1. Item 2.B: Bond Information

Your *home state* may require you to maintain a bond. For example, a bond may be required if you have *custody* of or *discretionary authority* over your *client's* funds or securities. A bond also may be required if your *home state* requires you to maintain a minimum net worth and you do not have that net worth. For additional information concerning bond requirements, you should consult your *home state's* investment adviser laws or contact your *home state's* securities authority. See Form ADV General Instruction 15.

2. Item 2.H: Financial Planning Services

Item 2.H. asks about financial planning services you have provided to your *clients.* This question assumes that you have been providing financial planning services for some time. Your response to this question should reflect your current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, skip Item 2.H.

3. Item 2.I: *Custody*

Item 2.I. asks about practices that you engage in that may indicate whether you have *custody* of *client's* funds or securities. This question assumes that you have been operating your advisory business for some time. Your response to this question should reflect you current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, base your response to Item 2.I. on the way you expect to conduct your business during the next year.

Glossary of Terms

1. **Advisory Affiliate:** Your advisory affiliates are (1) all of your officers, partners, or directors (or any ***person*** performing similar functions); (2) all ***persons*** directly or indirectly ***controlling*** or ***controlled by*** you; (3) all of your current employees (other than clerical or administrative employees); and (4) any ***person*** who solicits on your behalf.

If you are a ''separately identifiable department or division'' (SID) of a bank, your ***advisory affiliates*** are: (1) all of your bank's employees who perform your investment advisory activities (other than clerical or administrative employees); (2) all persons designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities (including supervising the employees who perform investment advisory activities); (3) all persons who directly or indirectly control your bank, and all persons whom you control in connection with your investment advisory activities; and (4) all other persons who directly manage any of your investment advisory activities (including directing, supervising or performing your advisory activities), all persons who directly or indirectly ***control*** those management functions, and all persons whom you control in connection with those management functions. *[Used in: Part 1A, Item 11] [Substantively the same as Part I, Item 11 of current Form ADV]*

2. **Annual Updating Amendment:** Within 90 days after your firm's fiscal year end, your firm must file an ''annual updating amendment,'' which is an amendment to your firm's Form ADV that reaffirms the eligibility information contained in Item 2 of Part 1A and updates the responses to any other item for which the information is no longer accurate. *[Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions, Part 1A (introductory text)] [Derived from current rule 204–1, Schedule I to Form ADV]*

3. **Brochure:** A written disclosure statement that your firm is required to provide to ***clients*** and prospective ***clients***. *See* Advisers Act rule 204–3; Form ADV, Part 2A. *[Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions; Used throughout Parts 2A, 2A Appendix 1, Part 2B] [Derived from rule 204–3(a)]*

4. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs] [Same as the Instructions for Form BD, Item 4(3)]*

5. **Client:** Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as members of your family. If your firm also provides other services (*e.g.,* accounting services), this term does not include clients that are not investment advisory clients. *[Used throughout Form ADV and Form ADV–W] [Derived from Item 5 of the Instructions to current Form ADV]*

6. **Control:** Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

- Each of your firm's officers, partners, or directors exercising executive responsibility (or ***persons*** having similar status or functions) are presumed to control your firm.
- A ***person*** is presumed to control a corporation if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.
- A ***person*** is presumed to control a partnership if the ***person*** has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.
- A ***person*** is presumed to control a limited liability company (''LLC'') if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.
- A ***person*** is presumed to control a trust if the ***person*** is a trustee or ***managing agent*** of the trust.

[Used in: General Instructions, Part 1A Instructions; Part 1A, Items 2A, 7, 10, 11, 12; Schedules A, B, C, D; Regulatory DRP] [Substantively the same as Advisers Act rule 0–7(b)(1), Item 5 of the Instructions to current Form ADV]

7. **Custody**: Your firm has custody if it directly or indirectly holds ***client*** funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. Your firm has custody, for example, if it has a general power of attorney over a ***client's*** account or signatory power over a ***client's*** checking account. *See* Advisers Act rule 206(4)–2. *[Used in: Part 1A, Item 9; Part 1B Instructions; Part 2A, Items 14, 18] [Substantively the same as Item 5 of the Instructions to current Form ADV]*

8. **Discretionary Authority:** Your firm has discretionary authority if it has the authority to decide which securities to purchase and sell for the ***client***. Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the ***client***. *[Used in: Part 1A, Item 8; Part 2A, Items 15, 18; Part 2B Instructions] [Derived from section 3(a)(35) of the Securities Exchange Act of 1934 (''Exchange Act'') (definition of ''investment discretion'')]*

9. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order. *[Used in: Part 1A, Item 11; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

10. **Felony:** For jurisdictions that do not differentiate between a felony and a ***misdemeanor***, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial. *[Used in: Part 1A, Item 11; Part 2A, Item 8; Part 2B, Item 3; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

11. **Foreign Financial Regulatory Authority:** This term includes (1) a foreign securities authority; (2) another governmental body or foreign equivalent of a ***self-regulatory organization*** empowered by a foreign government to administer or enforce its laws relating to the regulation of investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above. *[Used in: Part 1A, Items 1, 11; Part 2A, Item 8; Part 2B, Items 3 and 8; DRPs] [Substantively the same as Advisers Act section 202(a)(24)]*

12. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters. *[Used in: Part 1A, Item 11; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(2)]*

13. **Government Entity:** Any state or political subdivision of a state, including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets controlled by the state or political subdivision or any agency, authority or instrumentality thereof; and (iii) any

officer, agent, or employee of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. *[Used in: Part 1A, Item 5D] [Same as proposed Advisers Act rule 206(4)–5(e)(3)]*

14. **High Net Worth Individual:** An individual with at least $750,000 managed by you, or whose net worth your firm reasonably believes exceeds $1,500,000, or who is a ''qualified purchaser'' as defined in section 2(a)(51)(A) of the Investment Company Act of 1940. The net worth of an individual may include assets held jointly with his or her spouse. *[Used in: Part 1A, Item 5D] [Substantively the same as Advisers Act rule 205–3(d)(1) (definition of ''qualified client'')]*

15. **Home State:** If your firm is registered with a state securities authority, your firm's ''home state'' is the state where it maintains its ***principal office and place of business.*** *[Used in: Part 1B] [Substantively the same as Advisers Act rule 203A–3(c) (definition of ''principal office and place of business'')]*

16. **Impersonal Investment Advice:** Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts. *[Used in: Part 2A, Instructions; Part 2B, Instructions] [Substantively the same as Advisers Act rule 203A–3(a)(3)(ii)]*

17. **Investment Adviser Representative:** Investment adviser representatives of SEC-registered advisers are subject to state registration in each state in which they have a ***place of business.*** Any of your firm's ***supervised persons*** (except those that provide only ***impersonal investment advice***) is an investment adviser representative, if—

- the ***supervised person*** regularly solicits, meets with, or otherwise communicates with your firm's ***clients,***
- the ***supervised person*** has more than five ***clients*** who are natural persons and not ***high net worth individuals,*** and
- more than ten percent of the ***supervised person's*** clients are natural persons and not ***high net worth individuals.***

Note: If your firm is registered with the state securities authorities and not the SEC, your firm may be subject to a different state definition of ''investment adviser representative.''

[Used in: Part 2, General Instructions; Part 2A, Item 13] [Substantively the same as Advisers Act rule 203A–3(a); the IARD ''help'' function will include examples from Advisers Act Release No. 1733] [1]

18. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an investment adviser, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association). *[Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8; DRPs] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(3) and Part I, Item 11 of current Form ADV]*

19. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act. *[Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(4) and Part I, Item 11 of current Form ADV]*

20. **Management Persons:** Anyone with the power to exercise, directly or indirectly, a ***controlling*** influence over your firm's management or policies, or to determine the general investment advice given to the ***clients*** of your firm.

Generally, all of the following are management persons:

- Your firm's principal executive officers, such as your chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; your directors, general partners, or trustees; and other individuals with similar status or performing similar functions;
- The members of your firm's investment committee or group that determines general investment advice to be given to clients; and
- If your firm does not have an investment committee or group, the individuals who determine general investment advice provided to clients (if there are more than five people, you may limit your firm's response to their supervisors).

[Used in: Part 1B, Item 2; Part 2A, Items 8, 9, 20] [Derived from Advisers Act rule 206(4)–4(d)(1)]

21. **Managing Agent:** A managing agent of an investment adviser is any ***person***, including a trustee, who directs or manages (or who participates in directing or managing) the affairs of any unincorporated organization or association that is not a partnership. *[Used in: Form ADV–NR] [Substantively the same as Advisers Act rule 0–2(d)(2)]*

22. **Minor Rule Violation:** A violation of a ***self-regulatory organization*** rule that has been designated as ''minor'' pursuant to a plan approved by the SEC. A rule violation may be designated as ''minor'' under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned ***person*** does not contest the fine. (Check with the appropriate ***self-regulatory organization*** to determine if a particular rule violation has been designated as ''minor'' for these purposes.) *[Used in: Part 1A, Item 11] [Same as Item 4(3) of the Instructions to Form BD]*

23. **Misdemeanor:** For jurisdictions that do not differentiate between a ***felony*** and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 8; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD]*

24. **NASDR CRD** or **CRD:** The Web Central Registration Depository (''CRD'') system operated by the National Association of Securities Dealers Regulation, Inc. (''NASDR'') for the registration of broker-dealers and broker-dealer representatives. *[Used in: Part 1A, Item 1; Part 2A, Item 1; Part 2A Appendix 1, Item 1; Part 2B, Item 1; Form ADV–W, Item 1] [Derived from Exchange Act rule 15b1–1 (broker-dealer registration requirements) and rule 1140 of the Membership and Registration Rules of the NASD (electronic filing rules)]*

25. **Non-Resident:** (a) an individual who resides in any place not subject to the jurisdiction of the United States; (b) a corporation incorporated in and having its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States; and (c) a partnership or other unincorporated organization or association that has its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States. *[Used in: Execution Page(s); Form ADV–NR] [Substantively the same as Advisers Act rule 0–2(d)(3)]*

26. **Notice Filing:** SEC-registered advisers may have to provide state securities authorities with copies of documents that are filed with the SEC. These filings are referred to as ''notice filings.'' *[Used in: Part 1A, Item 2; Part 2, General Instructions; Part 2A Appendix 1, Instructions; Execution Page(s); Form ADV–W] [Derived from Coordination Act section 307(a)]*

27. **Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an order, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions. *[Used in: Part 1A, Items 2 and 11; Part 2A, Item 8; Part 2B, Item 3; Schedule D; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

28. **Performance-Based Fee:** An investment advisory fee based on a share of capital gains on, or capital appreciation of, ***client*** assets. A fee that is based upon a percentage of assets that you manage is not a performance-based fee. *[Used in: Part 1A, Item 5; Part 2A, Item 20] [Derived from Advisers Act rule 205–3(a)]*

29. **Person:** A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company (''LLC''), limited liability partnership (''LLP''), or other organization. *[Used throughout Form ADV and Form ADV–W] [Substantively the same as Advisers Act section 202(a)(16) (definition of ''person''), section 202(a)(5) (definition of ''company'') and Item 5 of the Instructions to current Form ADV]*

30. **Principal Place of Business or Principal Office and Place of Business:** Your firm's executive office from which your firm's officers, partners, or managers direct, control, and coordinate the activities of your firm. *[Used in: Part 1A, Items 1 and 2; Schedule D; Form ADV–W, Item 1] [Substantively the same as Advisers Act rules 203A–3(c) and 222–1(b)]*

31. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, ***self-regulatory organization*** or ***foreign financial regulatory authority;*** a ***felony*** criminal indictment or information (or equivalent formal charge); or a ***misdemeanor*** criminal information (or

[1] Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Officers and Places of Business in Colorado or Iowa, Investment Advisers Act Release No. 1733 (July 17, 1998) [63 FR 39708 (July 24, 1998)].

equivalent formal charge). This term does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD]*

32. **Related Person:** Any ***advisory affiliate*** and any ***person*** that is under common ***control*** with your firm. *[Used in: Part 1A, Items 7, 8, 9; Schedule D; Part 2A, Items 9, 10, 11, 13, 14; Form ADV-W, Item 3] [Substantively the same as Item 5 of the Instructions to current Form ADV]*

33. **Self-Regulatory Organization or SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade (''CBOT''), National Association of Securities Dealers, Inc. (''NASD'') and New York Stock Exchange (''NYSE'') are self-regulatory organizations. *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Substantively the same as Advisers Act rule 206(4)–4(d)(5) and Item 4(1) of the Instructions to Form BD]*

34. **Sponsor:** A sponsor of a ***wrap fee program*** sponsors, organizes, or administers the program or selects, or provides advice to ***clients*** regarding the selection of, other investment advisers in the program. *[Used in: Part 1A, Item 5; Schedule D; Part 2, General Instructions; Part 2A, Item 4; Part 2A Appendix 1, Instructions] [Derived from Advisers Act rule 204–3(f)(1)]*

35. **State Securities Authority:** The securities commission (or any agency or office performing like functions) of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. *[Used throughout Form ADV]; [Derived from Advisers Act section 202(a)(19) (definition of ''State'') and NSMIA section 307(a)]*

36. **Supervised Person:** Any of your officers, partners, directors (or other ***persons*** occupying a similar status or performing similar functions), or employees, or any other ***person*** who provides investment advice on your behalf and is subject to your supervision and control. *[Used in: Part 2A, Item 5; Part 2B] [Substantively the same as Advisers Act section 202(a)(25)]*

37. **Wrap Brochure:** The written disclosure statement that ***sponsors*** of ***wrap fee programs*** are required to provide to each of their ***wrap fee program clients.*** *[Used in: Part 2, Instructions; Part 2A, Appendix 1] [Derived from Advisers Act rule 204–3(f)]*

38. **Wrap Fee Program:** Any advisory program under which a specified fee or fees not based directly upon transactions in a ***client's*** account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of ***client*** transactions. *[Used in: Part 1, Item 5; Schedule D; Part 2, Instructions; Part 2A, Item 4; Part 2A Appendix 1; Part 2B, Instructions] [Substantively the same as Advisers Act rule 204–3(g)(4)]*

BILLING CODE 8010–01–P

FORM ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 1A

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Check the box that indicates what you would like to do (check all that apply):

- ☐ Apply for registration as an investment adviser with the SEC.
- ☐ Apply for registration as an investment adviser with one or more states.
- ☐ Submit an *annual updating amendment* to your registration for your fiscal year ended _____.
- ☐ Submit an other-than-annual amendment to your registration.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

_____

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.

_____

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of ☐ your legal name or ☐ your primary business name:

_____

D. If you are registered with the SEC as an investment adviser, your SEC file number: 801-_____

E. If you have a number ("*CRD* Number") assigned by the *NASD's CRD* system or by the IARD system, your *CRD* number:

_____

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

FORM ADV Part 1A Page 2 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more states, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your *principal office and place of business*:

☐ Monday - Friday ☐ Other: _____

Normal business hours at this location: _____

(3) Telephone number at this location: _____
(area code) (telephone number)

(4) Facsimile number at this location: _____
(area code) (telephone number)

G. Mailing address, if different from your *principal office and place of business* address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

FORM ADV Part 1A Page 3 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

I. Do you have a World Wide Web site address? Yes ☐ No ☐

If "yes," list all addresses on Section 1.I. of Schedule D. Do not provide individual electronic mail addresses in response to this Item.

J. Contact Employee:

_____
(name)

_____
(title)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if contact employee has one)

The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.

K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?
Yes ☐ No ☐

If "yes," complete Section 1.K. of Schedule D.

L. Are you registered with a *foreign financial regulatory authority*? Yes ☐ No ☐

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.L. of Schedule D.

FORM ADV Part 1A Page 4 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(10), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(11). You:

☐ (1) have *assets under management* of $25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

☐ (2) have your *principal office and place of business* in the U.S. Virgin Islands or Wyoming;

☐ (3) have your *principal office and place of business* outside the United States;

☐ (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

☐ (5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

☐ (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

☐ (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls,* is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D).

☐ (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

FORM ADV Part 1A Page 5 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

☐ (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

☐ (10) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A(10) of Schedule D.

☐ (11) are no longer eligible to remain registered with the SEC.

See Part 1A Instruction 2.h. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to state securities authorities a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check and circle the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, circle the unchecked box(es) next to those state(s).

☐ AL	☐ CT	☐ HI	☐ KY	☐ MN	☐ NH	☐ OH	☐ SC	☐ VA
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ WA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WV
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WI
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	
☐ CO	☐ GU	☐ KS	☐ MI	☐ NV	☐ ND	☐ RI	☐ VT	

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must filed before the end of the year (December 31).

Item 3 Form of Organization

A. How are you organized?

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC)
☐ Other (specify): _____

If you are changing your response to this Item, see Part 1A Instruction 4.

FORM ADV Part 1A Page 6 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

B. On the last day of what month does your fiscal year end each year? _____

C. Under the laws of what state or country are you organized? _____

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

Are you, at the time of this filing, succeeding to the business of a registered investment adviser?

☐ Yes ☐ No

If "yes," complete Section 4 of Schedule D.

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, leave this Item blank. See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees and Independent Contractors

A. Approximately how many employees and independent contractors do you have? Include full and part-time employees and independent contractors but do not include any clerical workers.

☐ 1- 5 ☐ 6 - 10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000 ☐ More than 1,000
If more than 1,000, how many? _____ (round to the nearest 100)

B. Approximately how many of these employees and independent contractors:

(1) perform investment advisory functions (including research)?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

(2) are registered representatives of a broker-dealer?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

(3) solicit advisory *clients*?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A. and 5.B. If an employee or independent contractor performs more than one function, you should count that individual in each of your responses to the questions in Item 5.B.

Clients

C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-100 ☐ 101-250 ☐ 251 – 500
☐ More than 500 If more than 500, how many? _____ (round to the nearest 100)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1) Individuals (other than *high net worth individuals*)	☐	☐	☐	☐	☐
(2) *High net worth individuals*	☐	☐	☐	☐	☐
(3) Banking or thrift institutions	☐	☐	☐	☐	☐
(4) Investment companies (including mutual funds)	☐	☐	☐	☐	☐
(5) Pension and profit sharing plans (other than plan participants)	☐	☐	☐	☐	☐
(6) Other pooled investment vehicles (e.g., hedge funds)	☐	☐	☐	☐	☐
(7) Charitable organizations	☐	☐	☐	☐	☐
(8) Corporations or other businesses not listed above	☐	☐	☐	☐	☐
(9) State or municipal *government entities*	☐	☐	☐	☐	☐
(10) Other: _____	☐	☐	☐	☐	☐

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Do not check Item 5.D(4) or Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

FORM ADV Part 1A Page 8 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☐ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify): _____

Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? ☐ Yes ☐ No

(2) If yes, what is the amount of your assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) $_____.00	(d) _____
Non-Discretionary:	(b) $_____.00	(e) _____
Total:	(c) $_____.00	(f) _____

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☐ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies
- ☐ (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- ☐ (5) Pension consulting services
- ☐ (6) Selection of other advisers
- ☐ (7) Publication of periodicals or newsletters
- ☐ (8) Security ratings or pricing services
- ☐ (9) Market timing services
- ☐ (10) Other (specify): _____

FORM ADV Part 1A Page 9 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-50 ☐ 51-100 ☐ 101-250 ☐ 251 – 500
☐ More than 500 If more than 500, how many? _____ (round to the nearest 100)

I. If you participate in a *wrap fee program*, do you (check all that apply):

☐ (1) *sponsor* the *wrap fee program*?
☐ (2) act as a portfolio manager for the *wrap fee program*?

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

☐ (1) Broker-dealer
☐ (2) Registered representative of a broker-dealer
☐ (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
☐ (4) Real estate broker, dealer, or agent
☐ (5) Insurance broker or agent
☐ (6) Bank (including a separately identifiable department or division of a bank)
☐ (7) Other financial product salesperson (specify): _____

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)? ☐ Yes ☐ No

(2) If yes, is this other business your primary business? ☐ Yes ☐ No
If "yes," describe this other business on Section 6.B. of Schedule D.

(3) Do you sell products or provide services other than investment advice to your advisory *clients*?
☐ Yes ☐ No

FORM ADV Part 1A Page 10 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); (3) all *persons* directly or indirectly *controlling* you, *controlled* by you, or under common *control* with you; and (4) any other *person* providing investment advice on your behalf.

A. You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (2) investment company (including mutual funds)
- ☐ (3) other investment adviser (including financial planners)
- ☐ (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (5) banking or thrift institution
- ☐ (6) accountant or accounting firm
- ☐ (7) lawyer or law firm
- ☐ (8) insurance company or agency
- ☐ (9) pension consultant
- ☐ (10) real estate broker or dealer
- ☐ (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), list on Section 7.A. of Schedule D all investment advisers with whom you are affiliated.

B. Are you or any *related person* a general partner in a limited partnership? ☐ Yes ☐ No
If "yes," for each limited partnership, complete Section 7.B. of Schedule D.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

FORM ADV Part 1A Page 11 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	☐	☐
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	☐	☐
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))?	☐	☐

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	☐	☐
(2) recommend purchase of securities to advisory *clients* for which you or any *related person* serves as underwriter, general or managing partner, or purchaser representative?	☐	☐
(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?	☐	☐

Investment or Brokerage Discretion

C. Do you or any *related person* have *discretionary authority* to determine the:	Yes	No
(1) securities to be bought or sold for a *client's* account?	☐	☐
(2) amount of securities to be bought or sold for a *client's* account?	☐	☐
(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?	☐	☐
(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?	☐	☐

	Yes	No
D. Do you or any *related person* recommend brokers or dealers to *clients*?	☐	☐
E. Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions?	☐	☐
F. Do you or any *related person*, directly or indirectly, compensate any *person* for *client* referrals?	☐	☐

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 *Custody*

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets.

A. Do you have *custody* of any advisory *clients'*:	Yes	No
(1) cash or bank accounts?	☐	☐
(2) securities?	☐	☐
B. Do any of your *related persons* have *custody* of any of your advisory *clients'*:		
(1) cash or bank accounts?	☐	☐
(2) securities?	☐	☐
C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that *related person* a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934?	☐	☐

Item 10 *Control Persons*

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies? ☐ Yes ☐ No

If yes, complete Section 10 of Schedule D.

FORM ADV Part 1A Page 13 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Item 11 Disciplinary Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One disciplinary event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you; and (4) any other *person* providing investment advice on your behalf. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

	Yes	No
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	☐	☐
(2) been *charged* with any *felony*?	☐	☐
B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* listed in Item 11.B(1)?	☐	☐

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	Yes	No
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	☐	☐
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	☐	☐
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐

FORM ADV Part 1A Page 14 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

	Yes	No
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	☐	☐
D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?	☐	☐
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	☐	☐
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?	☐	☐
(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?	☐	☐

FORM ADV Part 1A Page 15 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

	Yes	No
F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?	☐	☐
G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?	☐	☐

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

	Yes	No
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H(1)?	☐	☐

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

FORM ADV Part 1A Page 16 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).

- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

	Yes	No
A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	☐	☐

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) control another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) control another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

C. Are you:

(1) controlled by or under common control with another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) controlled by or under common control with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

FORM ADV Schedule A	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions;

   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? ☐ Yes ☐ No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
			MM	YYYY			PR	

FORM ADV Schedule B	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. With respect to each owner listed on Schedule A (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

   (c) in the case of an owner that is a trust, the trust and each trustee; and

   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other (general partner, trustee, or elected manager)

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code		*Control Person*	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
				MM	YYYY		PR		

FORM ADV Schedule C	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are:

NA - less than 5%	C - 25% but less than 50%	G - Other (general partner, trustee, or elected member)
A - 5% but less than 10%	D - 50% but less than 75%	
B - 10% but less than 25%	E - 75% or more	

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amend-ment	Title or Status	Date Title or Status Acquired		Owner-ship Code	*Control Person*		*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
				MM	YYYY			PR	

5. List below all changes to Schedule B (Indirect Owners):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amend-ment	Entity in Which Interest is Owned	Status	Date Status Acquired		Owner-ship Code	*Control Person*		*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
					MM	YYYY			PR	

FORM ADV Schedule D **Page 1 of 4**	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 1.

SECTION 1.B. Other Business Names
Check here if you are completing this section: ☐

List your other business names and the jurisdictions in which you use them. If you have more than two, complete an additional Schedule D Page 1.
Name _____ Jurisdiction _____
Name _____ Jurisdiction _____

SECTION 1.F. Other Offices
Check here if you are completing this section: ☐

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of employees).
Check only one box: ☐ Add ☐ Delete ☐ Amend

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Telephone Number at this location: _____
(area code) (telephone number)
Facsimile Number at this location: _____
(area code) (telephone number)

SECTION 1.I. World Wide Web Site Addresses
Check here if you are completing this section: ☐

List your World Wide Web site addresses. If you have more than four, complete an additional Schedule D Page 1.
1. _____ 3. _____
2. _____ 4. _____

SECTION 1.K. Location of Books and Records
Check here if you are completing this section: ☐

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.
Check only one box: ☐ Add ☐ Delete ☐ Amend
Name of entity where books and records are kept: _____

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

This is (check one): ☐ one of your branch offices or affiliates.
☐ a third-party unaffiliated recordkeeper.
☐ other.
Briefly describe the books and records kept at this location. _____

FORM ADV Schedule D **Page 2 of 4**	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Use this Schedule D Page 2 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 2.

SECTION 1.L. Registration with *Foreign Financial Regulatory Authorities*
Check here if you are completing this section: ☐

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

English Name of *Foreign Financial Regulatory Authority* _____
Name of Country _____

SECTION 2.A(7) Affiliated Adviser
Check here if you are completing this section: ☐

If you are relying on the exemption in rule 203A-2(c) from the prohibition on registration because you *control,* are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser _____
CRD Number of Registered Investment Adviser (if any) _____
SEC Number of Registered Investment Adviser 801-_____

SECTION 2.A(8) Newly Formed Adviser
Check here if you are completing this section: ☐

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A(9) Multi-State Adviser
Check here if you are completing this section: ☐

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

FORM ADV
Schedule D
Page 3 of 4

Your Name: _____ SEC File No.: _____
Date: _____ *CRD* No.: _____

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 3.

SECTION 2.A(10) SEC Exemptive *Order*
Check here if you are completing this section: ☐

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:
Application Number: 803-_____ Date of *order*: _____
(mm/dd/yyyy)

SECTION 4 Successions
Check here if you are completing this section: ☐

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

Date of Succession _____ Name of Acquired Firm _____
(mm/dd/yyyy)
Acquired Firm's SEC File No. (if any) 801-_____ Acquired Firm's *CRD* Number (if any) _____

SECTION 5.I(2) *Wrap Fee Programs*
Check here if you are completing this section: ☐

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

Name of *Wrap Fee Program* _____
Name of *Sponsor* _____

SECTION 6.B. Description of Primary Business
Check here if you are completing this section: ☐

Describe your primary business (not your investment advisory business): _____
_____
_____
_____
_____
_____

SECTION 7.A. Affiliated Advisers
Check here if you are completing this section: ☐

Complete the following information for each adviser with whom you are affiliated. If you are affiliated with more than two advisers, complete an additional Schedule D Page 3.

Legal Name of Affiliated Adviser: _____
Primary Business Name of Affiliated Adviser: _____
Affiliated Adviser's SEC File Number (if any) 801- _____ Affiliated Adviser's *CRD* Number (if any): _____

Legal Name of Affiliated Adviser: _____
Primary Business Name of Affiliated Adviser: _____
Affiliated Adviser's SEC File Number (if any) 801- _____ Affiliated Adviser's *CRD* Number (if any): _____

FORM ADV Schedule D **Page 4 of 4**	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 4.

SECTION 7.B. Limited Partnership Participation
Check here if you are completing this section: ☐

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner.

Name of Limited Partnership: _____
Are your *clients* solicited to invest in the limited partnership? ☐ yes ☐ no
Approximately what percentage of your *clients* have invested in this limited partnership? _____%
Cost per unit of limited partnership interests sold in your last fiscal year: $_____
Total value of the limited partnership: $_____

SECTION 10 *Control Persons*
Check here if you are completing this section: ☐

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

Firm or Organization Name _____

CRD Number (if any) _____ Effective Date _____ (mm/dd/yyyy) Termination Date _____ (mm/dd/yyyy)

Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Individual Name (if applicable) (Last, First, Middle) _____

CRD Number (if any) _____ Effective Date _____ (mm/dd/yyyy) Termination Date _____ (mm/dd/yyyy)

Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Briefly describe the nature of the *control*: _____

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Items 11.A. or 11.B. of Form ADV.

Check item(s) being responded to: ☐ 11.A(1) ☐ 11.A(2) ☐ 11.B(1) ☐ 11.B(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the items listed above.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number

This *advisory affiliate* is ☐ a firm ☐ an individual
Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. If charge(s) were brought against an organization over which you or an *advisory affiliate* exercise(d) *control*: Enter organization name, whether or not the organization was an *investment-related* business and your or the *advisory affiliate's* position, title, or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

   A. Date First *Charged* (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each charge, and (4) product type if charge is *investment-related*).

   _____
   _____
   _____

   C. Did any of the Charge(s) within the Event involve a *felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY):

   Exact Explanation

   If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

_____
_____
_____
_____
_____
_____

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (Your response must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:

☐ 11.C(1)	☐ 11.C(2)	☐ 11.C(3)	☐ 11.C(4)	☐ 11.C(5)
☐ 11.D(1)	☐ 11.D(2)	☐ 11.D(3)	☐ 11.D(4)	☐ 11.D(5)
☐ 11.E(1)	☐ 11.E(2)	☐ 11.E(3)	☐ 11.E(4)	
☐ 11.F.	☐ 11.G.			

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

PART I

The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

☐ You (the advisory firm)
☐ You and one or more of your *advisory affiliates*
☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

C. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. Regulatory Action initiated by:
   ☐ SEC ☐ Other Federal ☐ State ☐ *SRO* ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

_____

2. Principal Sanction (check appropriate item):

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): [ ] ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

_____
_____

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved (check appropriate item):

☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ *Order* ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions Ordered (check all appropriate items)?

Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided).

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 11.H. of Part 1A and Item 2.F. of Part 1B of Form ADV.

Check Part 1A item(s) being responded to: ☐ 11.H(1)(a) ☐ 11.H(1)(b) ☐ 11.H(1)(c) ☐ 11.H(2)
Check Part 1B item(s) being responded to: ☐ 2.F(1) ☐ 2.F(2) ☐ 2.F(3) ☐ 2.F(4) ☐ 2.F(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11.H. of Part 1A or Item 2.F. of Part 1B. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
☐ You (the advisory firm)
☐ You and one or more of your *advisory affiliates*
☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number

This *advisory affiliate* is ☐ a firm ☐ an individual
Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to Item 11.H(1)(a), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

D. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority, SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

_____

2. Principal Relief Sought (check appropriate item):

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

_____
_____

3. Filing Date of Court Action (MM/DD/YYYY): [ ] ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed
☐ Annuity(ies) - Variable
☐ CD(s)
☐ Commodity Option(s)
☐ Debt - Asset Backed
☐ Debt - Corporate
☐ Debt - Government
☐ Debt - Municipal
☐ Derivative(s)
☐ Direct Investment(s) - DPP & LP Interest(s)
☐ Equity - OTC
☐ Equity Listed (Common & Preferred Stock)
☐ Futures - Commodity
☐ Futures - Financial
☐ Index Option(s)
☐ Insurance
☐ Investment Contract(s)
☐ Money Market Fund(s)
☐ Mutual Fund(s)
☐ No Product
☐ Options
☐ Penny Stock(s)
☐ Unit Investment Trust(s)
☐ Other _____

Other Product Types:

_____

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

_____

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

[ ]

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

7. Describe the allegations related to this civil action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted (check appropriate items)?

Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).

FORM ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 1B

You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the *state securities authorities*.

Item 1 State Registration

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

☐ AL	☐ CT	☐ HI	☐ KY	☐ MN	☐ NH	☐ OH	☐ SC	☐ VA
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ WA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WV
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WI
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	
☐ CO	☐ GU	☐ KS	☐ MI	☐ NV	☐ ND	☐ RI	☐ VT	

Item 2 Additional Information

A. Person responsible for supervision and compliance:

_____
(name)

_____
(title)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if the person has one)

B. Bond Information, if required by your *home state*.

(1) Name of Issuing Insurance Company:

_____

(2) Amount of Bond: $_____.00

(3) Bond Policy Number: _____

FORM ADV Part 1B Page 2 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

	Yes	No
For "yes" answers to the following question, complete a Bond DRP:		
C. Has a bonding company ever denied, paid out on, or revoked a bond for you?	☐	☐
For "yes" answers to the following question, complete a Judgment/Lien DRP:		
D. Do you have any unsatisfied judgments or liens against you?	☐	☐
For "yes" answers to the following questions, complete an Arbitration DRP:		
E. Have you or any *advisory affiliate* been the subject of an arbitration claim alleging damages in excess of $2,500, involving any of the following:		
(1) any investment or an *investment-related* business or activity?	☐	☐
(2) fraud, false statement, or omission?	☐	☐
(3) theft, embezzlement, or other wrongful taking of property?	☐	☐
(4) bribery, forgery, counterfeiting, or extortion?	☐	☐
(5) dishonest, unfair, or unethical practices?	☐	☐
For "yes" answers to the following questions, complete a Civil Judicial Action DRP:		
F. Have you, any *advisory affiliate*, or any *management person* been *found* liable in a civil, *self-regulatory organization*, or administrative *proceeding* involving any of the following:		
(1) an investment or *investment-related* business or activity?	☐	☐
(2) fraud, false statement, or omission?	☐	☐
(3) theft, embezzlement, or other wrongful taking or property?	☐	☐
(4) bribery, forgery, counterfeiting, or extortion?	☐	☐
(5) dishonest, unfair, or unethical practices?	☐	☐

G. Other Business Activities

(1) You are actively engaged in business as a(n) (check all that apply):

☐ Attorney
☐ Certified public accountant
☐ Tax preparer

FORM ADV Part 1B Page 3 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

(2) If you are actively engaged in any business other than those listed in Item 6.A. of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

_____
_____
_____
_____
_____
_____
_____
_____

H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

	Securities Investments	Non-Securities Investments
Under $100,000	☐	☐
$100,001 to $500,000	☐	☐
$500,001 to $1,000,000	☐	☐
$1,000,001 to $2,500,000	☐	☐
$2,500,001 to $5,000,000	☐	☐
More than $5,000,000	☐	☐

If more than $5,000,000, how much? $ _____ (round to the nearest $1,000,000)

I. *Custody*

	Yes	No
(1) Do you withdraw advisory fees directly from your *clients'* accounts?	☐	☐
(2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory *clients* are either partners of the partnership or beneficiaries of the trust?	☐	☐

FORM ADV Part 1B Page 4 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

	Yes	No
(3) If you answered "yes" to Item 2.I(1) or 2.I(2), respond to the following:		
(a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the *client*?	☐	☐
(b) Do you send quarterly statements to your *clients* showing all disbursements for the custodian account, including the amount of the advisory fees?	☐	☐
(c) Do your *clients* provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee?	☐	☐
(d) If you are the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting the direct payment or the transfer of funds or securities from the partnership account?	☐	☐
(4) Do you require prepayment of fees of more than $500 per *client* or for more than six months in advance?	☐	☐

J. If you are organized as a sole proprietorship, please answer the following:

	Yes	No
(1) Have you passed the Series 65 examination or both the Series 66 and Series 7 examinations?	☐	☐
(2) (a) Do you have any investment advisory professional designations?	☐	☐

If "no," you do not need to answer Item 2.J(2)(b).

(b) I have earned and I am in good standing with the organization that issued the following credential:

☐ 1. Certified Financial Planner ("CFP")
☐ 2. Chartered Financial Analyst ("CFA")
☐ 3. Chartered Financial Consultant ("ChFC")
☐ 4. Chartered Investment Counselor ("CIC")
☐ 5. Personal Financial Specialist ("PFS")
☐ 6. None of the above

BOND DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 2.C. of Part 1B of Form ADV.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Your Name	Your *CRD* Number

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of bonding company action: (your response must fit within the space provided):

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 2.D. of Part 1B of Form ADV.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Your Name	Your *CRD* Number

1. Judgment/Lien Amount:

2. Judgment/Lien Holder:

3. Judgment/Lien Type: (check appropriate item)

☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If no, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If no, how was matter resolved? (check appropriate item)

☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable) (your response must fit within the space provided):

ARBITRATION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 2.E. of Part 1B of Form ADV.

Check Part 1B item(s) being responded to: ☐ 2.E(1) ☐ 2.E(2) ☐ 2.E(3) ☐ 2.E(4) ☐ 2.E(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 2.E. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate checkbox.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number

This *advisory affiliate* is ☐ a firm ☐ an individual
Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Arbitration/Reparation Claim initiated by: (Name of private plaintiff, firm, etc.)

_____

2. Principal Relief Sought (check appropriate item):

☐ Restraining Order ☐ Disgorgement ☐ Money Damages (Private/Civil Claim) ☐ Other _____
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution

(continued)

ARBITRATION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

Other Relief Sought:

3. Initiation Date of Arbitration/Reparation Claim (MM/DD/YYYY):
   ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

5. Arbitration/Reparation Claim was filed with (*NASD*, AAA, NYSE, CBOE, CFTC, etc.) and Docket/Case Number:

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the arbitration/reparation (if applicable):

7. Describe the allegations related to this arbitration/reparation (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

(continued)

ARBITRATION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other _____

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted (check appropriate items)?

☐ Monetary Award ☐ Settlement ☐ Disgorgement/Restitution

Amount: $ ☐ Injunction

B. Other Sanctions:

_____
_____
_____

C. Sanction detail: If disposition resulted in a penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

_____
_____
_____
_____

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).

_____
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BILLING CODE 8010–01–C

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Part 2: Uniform Requirements for Investment Adviser *Brochure* and Supplements

General Instructions for Part 2 of Form ADV

Under SEC and similar state rules, you are required to deliver to *clients* and prospective *clients* a *brochure* disclosing material information about your firm and its business practices. You also may be required to deliver a *brochure* supplement disclosing material information about one or more of your *supervised persons.* Part 2 of Form ADV sets out the minimum required disclosures that your *brochure* (Part 2A for a firm *brochure,* or Appendix 1 for a *wrap fee program brochure*) and *brochure* supplements (Part 2B) must contain.

1. *Narrative Format.* Part 2 of Form ADV consists of a series of items that contain disclosure requirements for preparing your firm's *brochure* and any required supplements. The items require narrative responses. You do not have to provide the responses in the same order that the items appear, and you should not repeat the items themselves in the *brochure* or the supplements.

2. *Plain English.* The items in Part 2 of Form ADV are designed to promote effective communication between you and your *clients.* Write your *brochure* and supplements in plain English, taking into consideration your clients' level of financial sophistication. Your *brochure* should be concise and direct. In drafting your *brochure* and *brochure* supplements, you should: (a) use short sentences; (b) use definite, concrete, everyday words; (c) use active voice; (d) use tables or bullet lists for complex material, whenever possible; (e) avoid legal jargon or highly technical business terms unless you explain them or you believe your *clients* will understand them; and (f) avoid multiple negatives. Consider providing examples to illustrate a description of your practices or policies.

Note: The SEC's Office of Investor Education and Assistance has published *A Plain English Handbook.* You may find this handbook helpful in writing your *brochure* and supplements. You can get a copy of this handbook from the SEC's web site at www.sec.gov/news/handbook.htm, or by calling 1–800–SEC–0330.

3. *Full Disclosure of All Conflicts of Interest.* Under federal and state law, you are a fiduciary required to make full disclosure to your *clients* of all material facts regarding conflicts of interest between you and your *client.* You therefore may have to disclose to *clients* information not specifically required by Part 2 of Form ADV.

4. *Full and Truthful Disclosure.* All information in your *brochure* and *brochure* supplements must be true and complete. It is unlawful under federal and state law to make false statements or omit any material facts.

5. *Filing.* You must file your *brochure* with your regulators as part of your Form ADV. You will file your *brochure* with your Form ADV on the IARD system, starting when the IARD system is capable of accepting these filings. Until then:

- If you are registered or registering with the SEC, you will preserve a copy of your *brochure* and make it available, upon request, to SEC staff—your *brochure* will be deemed filed with the SEC. See SEC rules 203–1, 204–1, and 204–2(a)(14). If you submit *notice filings* to states, the *state securities authorities* require you to send them paper copies of your *brochure* until the IARD system is capable of accepting these filings. You are not required to file your *brochure* supplements, but record-keeping rules require you to preserve a copy of the supplements and make them available to SEC staff. See SEC rule 204–2(a)(14).
- If you are registered or registering with one or more of the *state securities authorities,* you will file with the securities authority for each state in which you are registered or registering a paper copy of your *brochure* and a paper copy of the *brochure* supplement for each *supervised person* and each *investment adviser representative* doing business in that state.

Instructions for Part 2A of Form ADV: Preparing Your Firm *Brochure*

1. *To whom must we offer or deliver a firm brochure, and when?* You must give a firm brochure to each client before or at the time you enter into an advisory agreement with that client. You must deliver the brochure even if your advisory agreement with the client is oral. See SEC rule 204–3(b)(1) and similar state rules.

You must deliver or offer each client a free update of the brochure each year. If a client accepts your offer, you must send the brochure to the client within seven days after you are notified. See SEC rule 204–3(b)(2) and similar state rules.

For SEC-registered advisers: You are not required to deliver, or offer, your *brochure* to either (1) *clients* who receive only impersonal investment advice from you and will pay you less than $500 per year or (2) clients that are SEC-registered investment companies (the *client* must be registered under the Investment Company Act of 1940, and the advisory contract must meet requirements of section 15(c) of that Act). See SEC rule 204–3(c).

Note: Even if you are not required to give a *brochure* to a *client,* you still have an affirmative obligation under the anti-fraud provisions of federal and state law to disclose to your *clients* all material facts regarding conflicts of interest between you and your *clients,* including all material disciplinary information.

2. *How should we offer and deliver our brochure and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *brochure* must be in writing. You may offer and deliver your *brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

3. *We advise limited partnerships, limited liability companies, and trusts. To whom must we offer or deliver our brochure?* It depends. If you are an SEC-registered adviser, you should determine whether the ''registered investment company exception'' in instruction 1 applies. If it does not apply, and you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then you must treat each limited partner, member, or beneficial owner as a *client* for purposes of delivering your *brochure* and *brochure* supplements. You should treat a limited liability partnership or limited liability limited partnership as a limited partnership. See SEC rule 204–3(d).

4. *We are an SEC-registered adviser and we have determined that we have no clients to whom we must offer or deliver a brochure. Must we prepare one?* No.

5. *We offer several advisory services. May we prepare multiple firm brochures?* Yes. If you offer substantially different types of advisory services, you may opt to prepare separate *brochures* so long as each *client* receives all applicable information about services and fees. Each *brochure* may omit information that does not apply to the advisory services and fees it describes. For example, your firm *brochure* that describes one advisory service can omit the fee schedule for a different advisory service that is not discussed in the *brochure.*

6. *We sponsor a wrap fee program. Is there a different brochure we need to offer and deliver to our wrap fee clients?* Yes. If you *sponsor* a *wrap fee program,* you must offer and deliver a *wrap fee program brochure* to your wrap fee *clients.* The disclosure requirements for preparing a *wrap fee program* brochure (also called a *wrap brochure*) appear in Part 2A Appendix 1 of Form ADV. If your entire advisory business is *sponsoring wrap fee programs,* you do not need to prepare a firm *brochure* separate from your *wrap brochure(s).* See SEC rule 204–3(e).

7. *May we include information not required by an item in our brochure?* Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

8. *What if information in our brochure changes*? If any information in your *brochure* becomes materially inaccurate, you must promptly amend your *brochure* by either revising and re-distributing your *brochure* or preparing a sticker to accompany the old *brochure*, as described below.

(a) *Filing the brochure amendment with regulators.*

- If you are registered with the SEC, you must preserve a copy of the revised *brochure* or the sticker, and make the revised *brochure* (and all stickers) available to SEC staff—your *brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *brochure* amendments with the *state securities authorities* to which you make *notice filings.*
- If you are registered with the *state securities authorities*, you must file all *brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients* promptly after the date of the

amendment. To deliver the new information, you can either revise and reprint your *brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *brochure* (or accompany your *brochure* with the stickers) to satisfy your *brochure* delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised *brochure*) to all existing *clients.* You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

Note: We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file your firm*brochure* with the IARD.

9. *Must we revise our brochure every year*? Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *brochure*. You must also reprint this revised *brochure*, incorporating all current stickers into the *brochure* text.

10. *We are a new firm. Do we need a brochure?* Yes. Respond to items in Part 2A of Form ADV based on the advisory services you propose to provide and the policies and practices you propose to adopt.

11. *We are a ''separately identifiable department or division'' (SID) of a bank. Must our brochure discuss our bank's general business practices*? No. Information you include in your firm *brochure* (or in *brochure* supplements) should be information about you, the SID, and your business practices, rather than general information about your bank.

Part 2A of Form ADV: Firm Brochure

Item 1 Cover Page

A. The cover page of your *brochure* must state your name, business address, telephone number, and the date of the *brochure*.

Note: If you primarily conduct advisory business under a name different from your full legal name, *and* you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *brochure*.

B. Display the following statements prominently on your cover page:

This brochure provides information about the qualifications and business practices of [your name]. Please contact [name and/or title of contact *person*] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.

Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [your name] is [your *CRD* number].

C. If you refer to yourself as a ''registered investment adviser'' or describe yourself as being ''registered,'' include a statement that registration does not imply a certain level of skill or training.

Item 2 Material Changes

If your *brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure*. The summary must state clearly that it discusses only material changes since the last annual update of your *brochure*, and it must provide the date of the last annual update of your *brochure*.

Note: You do not have to provide the summary to a *client* or prospective *client* who has not received a previous version of your *brochure*.

Item 3 Table of Contents

Provide a table of contents to your *brochure*.

Note: Your table of contents must be detailed enough so that your *clients* can locate topics easily.

Item 4 Advisory Business

A. Describe your advisory firm, including how long you have been in business. Identify your principal owner(s).

Note: (1) For purposes of this item, your principal owners include the *persons* you list as owning 25% or more of your firm on Schedule A of Form ADV (Ownership Codes C, D or E). (2) If you are a publicly held company without a 25% shareholder, simply disclose that you are publicly held. (3) If an individual or company owns 25% or more of your firm through subsidiaries, you must identify the individual or parent company and intermediate subsidiaries. If you are a state-registered adviser, you must identify all intermediate subsidiaries. If you are an SEC-registered adviser, you must identify intermediate subsidiaries that are publicly held, but not other intermediate subsidiaries.

B. Describe the types of advisory services you offer. If you hold yourself out as specializing in a particular type of advisory service, such as financial planning or market timing, explain in detail the nature of that service. Similarly, if you provide investment advice only with respect to limited types of securities, explain the type of investment advice you offer, and disclose that your advice is limited to those types of investments.

C. Explain whether and how you tailor your advisory services to the individual needs of *clients*. Explain whether *clients* may impose restrictions on investing in certain securities or types of securities.

D. If you manage *client* assets, disclose the amount of assets you manage on a *discretionary* basis and the amount of assets you manage on a non-*discretionary* basis. Disclose the date ''as of'' which you calculated the amounts.

Note: In calculating the amount of *client* assets you manage in response to this Item, you do not have to use the method for computing assets under management that you used to respond to Item 5.F. in Part 1A. The amount you disclose may be rounded to the nearest $100,000. Your ''as of'' date must not be more than three months before the date of your *brochure*. You do not need to amend your *brochure* between annual updates solely to update the amounts of *client* assets you manage.

E. If you issue periodicals or periodic reports about securities, list the names of the periodicals and briefly describe their subject matter.

Note: You do not need to list or describe a report on an individually named security.

F. If you participate in *wrap fee programs* by providing portfolio management services, (1) disclose the programs offered and the names of the *sponsors*, (2) describe any differences between how you manage wrap fee accounts and how you manage other accounts, and (3) explain that you receive a portion of the wrap fee.

Item 5 Fees and Compensation

A. Describe how you are compensated for your advisory services. Provide your fee schedule. Disclose whether the fees are negotiable.

B. Describe whether you deduct fees from *clients*' assets or bill *clients* for fees incurred. If *clients* may select either method, disclose this fact. Explain how often you bill *clients* or deduct your fees.

C. Describe any other types of fees or expenses *clients* may pay in connection with your advisory services, such as custodian fees or mutual fund expenses. Disclose the amount or range of these fees. Disclose that *clients* will incur brokerage and other transaction costs, and direct the reader to the section of your *brochure* discussing brokerage.

D. If your *clients* either may or must pay your fees in advance, disclose this fact. Explain how a *client* may obtain a refund of any pre-paid fee if the advisory contract is terminated before the end of the billing period. Explain how you will determine the amount of the refund.

E. If you or a *supervised person* accepts compensation for the sale of securities or other investment products, including distribution or service (''trail'') fees from the sale of mutual funds, disclose this fact and respond to Items 5.E.1, 5.E.2., 5.E.3. and 5.E.4.

1. Explain that this practice presents a conflict of interest and gives you or the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*. If you recommend primarily mutual funds, disclose whether you will recommend ''no-load'' funds.

2. Explain that *clients* have the option to purchase investment products that you recommend through other brokers or agents that are not affiliated with you.

3. If more than 50% of your revenue from advisory *clients* results from commissions and other compensation for the sale of investment products you recommend to your *clients*, including trail fees from the sale of mutual funds, disclose that commissions provide your primary or, if applicable, your exclusive compensation.

4. If you charge advisory fees in addition to commissions, disclose whether you reduce

your advisory fees to offset the commissions you accept.

Note: If you receive commissions in connection with the purchase or sale of securities, you should carefully consider the applicability of the broker-dealer registration requirements of the Securities Exchange Act of 1934.

Item 6 Types of *Clients*

Describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans. If you have any requirements to open or maintain an account, such as a minimum account size, disclose the requirements.

Item 7 Methods of Analysis, Investment Strategies and Risk of Loss

A. Describe the methods of analysis and investment strategies you use in formulating investment advice or managing assets. Explain that investing in securities involves risk of loss that *clients* should be prepared to bear.

B. If you primarily use a particular method of analysis or strategy, explain the specific risks involved. If the method of analysis or strategy involves significant or unusual risks, discuss these risks in detail. If your primary strategy involves frequent trading of securities, explain how frequent trading can affect investment performance, particularly through increased brokerage and other transaction costs and taxes.

C. If you recommend primarily a particular type of security, explain the specific risks involved. If the type of security involves significant or unusual risks, discuss these risks in detail.

D. Discuss your practices regarding cash balances in *client* accounts, including whether you invest cash balances for temporary purposes and, if so, how.

Item 8 Disciplinary Information

If there are legal or disciplinary events that are material to a *client's* or prospective *client's* evaluation of your advisory business and the integrity of your management, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

If your advisory firm or a *management person* has been involved in an administrative *proceeding* before the SEC described in Item 8.B.2. below, then you must also *deliver* a copy of the SEC's *order* to your *clients* if the date of the *order* is on or after [effective date of new Form ADV]. You must deliver copies of the *order* as if it were a sticker to your *brochure* (that is, the order must accompany your *brochure* to prospective *clients*, and you must also deliver the *order* to existing *clients*), for one year following the date of the *order*.

Items 8.A., 8.B., and 8.C. list specific legal and disciplinary events that you must presume are material for this Item. If your advisory firm or a *management person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in your or the *management person's* favor, or was reversed, suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the ''date'' of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 8.A., 8.B., and 8.C. are not an exclusive list. If your advisory firm or a *management person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 8.A., 8.B., or 8.C. but *is* material to a *client's* or prospective *client's* evaluation of your advisory business or the integrity of its management, you must disclose the event. Similarly, even if more than ten years have passed since the date of the event, you must disclose the event if it is so serious that it remains currently material to the *client's* or prospective *client's* evaluation.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which your firm or a *management person*.

1. was convicted of, or pled guilty or nolo contendere (''no contest'') to (a) any *felony*; (b) a *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, your firm or a *management person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of your firm or a *management person* to act in an *investment-related* business;

(b) barring or suspending your firm's or a *management person's* association with an *investment-related* business;

(c) otherwise significantly limiting your firm's or a *management person's investment-related* activities; or

(d) imposing a civil money penalty of more than $2,500 on your firm or a *management person*.

C. A *self-regulatory organization (SRO) proceeding* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the SRO's rules and was the subject of an *order* by the SRO barring or suspending your firm or a *management person* from membership or from association with other members, or expelling your firm or a *management person* from membership; otherwise significantly limiting your firm's or a *management person's investment-related* activities; or fining your firm or a *management person* more than $2,500.

Note: Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you are not required to disclose it. Your determination, however, is not binding on any other *person,* including any regulator or court. When you review a legal or disciplinary event involving your firm or a *management person* for materiality, you should consider all of the following factors: (1) the proximity of the *person involved* in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204–2(a)(14)(ii).

Item 9 Other Financial Industry Activities and Affiliations

A. If you or any of your *management persons* are registered, or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer, disclose this fact.

B. If you or any of your *management persons* are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, or a commodity trading advisor, disclose this fact.

C. Describe any material relationship or arrangement that you or any of your *management persons* have with any *related person* listed below. Identify the *related person* and, if the relationship or arrangement creates a material conflict of interest with *clients,* describe the nature of the conflict and the restrictions or internal procedures you use when there is a conflict of interest, including any procedures for disclosing these conflicts to *clients.*

1. broker-dealer, municipal securities dealer, or government securities dealer or broker.

2. investment company (including a mutual fund, closed-end investment company, unit investment trust, private investment company or ''hedge fund,'' and offshore fund).

3. other investment adviser or financial planner.

4. futures commission merchant, commodity pool operator, or commodity trading advisor.

5. banking or thrift institution.

6. accountant or accounting firm.

7. lawyer or law firm.

8. insurance company or agency.

9. pension consultant.

10. real estate broker or dealer.

11. sponsor or syndicator of limited partnerships.

12. securities exchange, securities association, or alternative trading system.

D. If you recommend or select other investment advisers for your *clients* and you receive compensation directly or indirectly from those advisers, or you have other business relationships with those advisers, describe these practices and discuss the conflicts of interest these practices create.

Item 10 Participation or Interest in *Client* Transactions and Personal Trading

A. If you or a *related person* recommends to *clients,* or buys or sells for *client* accounts, securities in which you or a *related person* has a material financial interest (excluding an interest as a shareholder of an SEC-registered, open-end investment company), describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients.* You do not need to repeat any information you provided in response to Item 5 of Part 2A.

Examples: (1) You or a *related person,* as principal, buys securities from (or sells securities to) your *clients;* (2) you or a *related person* acts as general partner in a partnership in which you solicit *client* investments; or (3) you or a *related person* acts as investment adviser to an investment company that you recommend to *clients.*

B. If you or a *related person* invests in the same securities (or related securities, e.g., warrants, options or futures) that you or a *related person* recommends to *clients,* discuss the conflicts of interest this presents and the restrictions or internal procedures you use when there is a conflict of interest in connection with personal trading, including your procedures for disclosing conflicts to *clients.*

C. If you or a *related person* recommends securities to *clients,* or buys or sells securities for *client* accounts, at or about the same time that you or a *related person* buys or sells the same securities for your own (or the *related person's* own) account, describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients.*

Note: If your firm has a code of ethics, some of the procedures you should discuss in response to Item 10 may be part of your code of ethics.

Item 11 Brokerage Practices

A. Describe your policies and practices in selecting or recommending broker-dealers for *client* transactions and determining the reasonableness of their compensation (e.g., commissions or spreads).

1. *Research and Other Soft Dollar Benefits.* If you receive research or other products or services other than execution (known as soft dollar benefits) from a broker-dealer or a third party in connection with *client* securities transactions, disclose your practices and discuss the conflicts of interest they create.

Note: Your disclosure and discussion must include all soft dollar benefits you receive, both proprietary (created or developed by the broker-dealer) and created or developed by a third party.

a. Explain that when you use *client* brokerage commissions to obtain research, products or services, you receive a benefit because you do not have to produce or pay for the research, products or services.

b. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving the research, products or services, rather than on your *clients'* interest in paying the lowest commission rate available.

c. If you may cause *clients* to pay commissions higher than those charged by other broker-dealers in return for soft dollar benefits (known as paying-up), disclose this fact.

d. Disclose whether you use soft dollar benefits to service all of your *clients'* accounts or only those that paid for the benefits. Disclose whether you seek to allocate soft dollar benefits to *client* accounts proportionately to the soft dollar credits the accounts generate.

e. Explain the procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for soft dollar benefits.

f. Describe the types of products and services you or any of your *related persons* acquired with *client* brokerage commissions within your last fiscal year.

Note: This description must be specific enough for your *clients* to understand the types of products or services you are acquiring and permit them to evaluate possible conflicts of interest. Your description must be more detailed for products or services that are not used in your investment decision-making process. Merely disclosing that you obtain various research reports and products is not specific enough.

2. *Brokerage for Client Referrals.* If you consider, in selecting or recommending broker-dealers, whether you or a *related person* receives *client* referrals from a broker-dealer or third party, disclose this practice and discuss the conflicts of interest it creates.

a. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving *client* referrals, rather than on your *clients'* interest in receiving the best execution services at the lowest rates available.

b. Explain any procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for *client* referrals.

3. *Directed Brokerage.*

a. If you routinely *request* or *require* that a *client* direct you to execute transactions through a specified broker-dealer, describe your practice or policy. Explain that not all advisers require their *clients* to direct brokerage. If you and the broker-dealer are affiliates or have another economic relationship that creates a material conflict of interest, describe the relationship and discuss the conflicts of interest it presents. If you must respond to this Item, you must *also* respond to Item 11.A.3.b. of Part 2A.

b. If you *permit* a *client* to direct brokerage, describe your practices. Explain that you may be unable to achieve best execution of *client* transactions. Explain that directing brokerage may cost *clients* more money. For example, in a directed brokerage account, the *client* may pay higher brokerage commissions because you may not be able to negotiate lower commissions or aggregate orders to reduce transaction costs.

4. *Commission Recapture.* If you direct any *client* transactions to a broker-dealer that provides commission recapture benefits to your *client* based on the trades you place, explain how commission recapture works, describe the benefits of commission recapture and explain how a *client* can elect to participate in commission recapture.

Note: ''Commission recapture'' means a program that permits a *client,* rather than the adviser, to receive benefits (including cash rebates, products, services, and expense payments or reimbursements) from broker-dealers in connection with that *client's* securities transactions.

B. Discuss whether and under what conditions you negotiate brokerage commissions on behalf of *clients.* If you do not negotiate commissions, or if you limit the extent to which you negotiate commissions, explain that this may result in *clients* paying higher brokerage costs than they might otherwise pay.

C. Discuss whether and under what conditions you aggregate the purchase or sale of securities for various *client* accounts in quantities sufficient to obtain reduced transaction costs (known as bunching). If you do not bunch orders when you have the opportunity to do so, explain your practice and describe the costs to *clients* of not bunching.

Item 12 Review of Accounts

A. Indicate whether you periodically review *client* accounts or financial plans. If you do, describe the frequency and nature of the review, and the titles of the employees who conduct the review.

B. If you review *client* accounts on other than a periodic basis, describe the factors that trigger a review.

C. Describe the content and indicate the frequency of regular reports you provide to *clients* regarding their accounts. State whether these reports are written.

Item 13 Payment for Client Referrals

A. If someone who is not a *client* provides an economic benefit to you for providing investment advice or other advisory services to your *clients,* describe the arrangement. For purposes of this Item, economic benefits include any sales awards or other prizes. You do not need to repeat any information you provided in response to Item 5 of Part 2A.

B. If you or a *related person* directly or indirectly compensates any *person* who is not your employee for *client* referrals, describe the arrangement and the compensation.

Note: If you compensate any *person* for *client* referrals, you should consider whether rules regarding solicitation arrangements and/or state rules requiring registration of *investment adviser representatives* apply.

Item 14 Custody

A. If you have *custody* of *client* funds or securities, disclose this fact. If you are not a bank, an insurance company, or a broker-dealer excepted from the requirements of rule 206(4)-2, disclose the additional risks that *clients* will face by having their assets in your *custody* instead of held by an independent custodian.

Note: You may be deemed to have *custody* of *client* funds or securities if a *related person* has *custody.* If so, your response to Item 14.A. should also identify the *related person* who has *custody.*

B. If you require *clients* to give you *custody* of their funds or securities, disclose that most advisers do not require this.

Note: You are not required to respond to Item 14.B. if you have *custody solely* because you (1) act as general partner for limited partnerships that you advise, (2) serve as trustee for your *client* accounts, or (3) deduct your advisory fees directly from your *clients'* accounts.

C. If you have *custody* over any *clients'* funds or securities, disclose what special reports, if any, you provide to those *clients.*

Item 15 Investment Discretion

If you accept *discretionary authority* to manage securities accounts on behalf of *clients,* disclose this fact and describe any limitations *clients* may (or customarily do) place on this authority. Describe the procedures you follow before you assume this authority (*e.g.,* execution of a power of attorney).

Item 16 Proxy Voting Policies

A. If you have, or will accept, authority to exercise voting power with respect to *client* securities, disclose the policies, practices, and procedures you use to determine how to vote proxies. Describe whether (and if so, how) your *clients* can direct your vote in a particular proxy solicitation, and what procedures you use when there is a conflict between your interest and those of your *clients.* Explain whether (and, if so, how) *clients* can find out how you voted with respect to their securities in a particular proxy solicitation.

B. If you do not vote proxies with respect to *client* securities, disclose this fact. Explain whether *clients* will receive their proxies directly from their custodian or a transfer agent or from you, and discuss whether (and if so, how) *clients* can contact you with questions about a particular proxy solicitation.

Item 17 Investment Performance

If you advertise or report the investment performance (such as the rate of return) of your managed accounts, securities recommendations, or model portfolios, describe any standards you use to calculate (or present) this performance, such as industry standards or standards used solely by you. Disclose whether any third party reviews this performance information to determine or verify its accuracy or its compliance with presentation standards; if so, name the *person* conducting the review and briefly describe the nature of the review.

Item 18 Financial Information

A. If you have *custody* of *client* funds or securities, or you require or solicit prepayment of more than $1,200 in fees per *client,* six months or more in advance, include a balance sheet for your most recent fiscal year.

1. The balance sheet must be prepared in accordance with generally accepted accounting principles, audited by an independent public accountant, and accompanied by a note stating the principles used to prepare it, the basis of securities included, and any other explanations required for clarity.

2. Show parenthetically the market or fair value of securities included at cost.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of SEC Regulation S–X.

Note: If you are a sole proprietor, show investment advisory business assets and liabilities separate from other business and personal assets and liabilities. You may aggregate other business and personal assets unless advisory business liabilities exceed advisory business assets.

Note: If you are an SEC-registered adviser and you are a bank, an insurance company or a broker-dealer excepted from the requirements of SEC rule 206(4)–2, you do not need to provide a balance sheet.

Note: If you have not completed your first fiscal year, include a balance sheet dated not more than 90 days prior to the date of your *brochure*.

B. If you are an SEC-registered adviser and you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than $1,200 in fees per *client,* six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients.* This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

C. If you have been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

Item 19 Index

The *brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Part 2A, indicating where in the *brochure* you address each item (*e.g.,* Item 18, page 3). The *brochure* you provide to your *clients* does not need to include this index.

If you are registering or registered with one or more *state securities authorities,* you must respond to the following additional Item.

Item 20 Requirements for State-Registered Advisers

A. Identify each of your principal executive officers and *management persons,* and describe their formal education and business background. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

B. Describe any business in which you are actively engaged (other than giving investment advice) and the approximate amount of time spent on that business. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

C. In addition to the description of your fees in response to Item 5 of Part 2A, if you or a *supervised person* are compensated for advisory services with *performance-based fees,* disclose this fact, and explain how this fee will be calculated. Disclose specifically that *performance-based compensation* may create an incentive for the adviser to recommend an investment that may carry a higher degree of risk to the *client.*

D. In addition to the events listed in Item 8 of Part 2A, if your advisory firm or a *management person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. an award or otherwise being *found* liable in an arbitration claim alleging damages in excess of $2,500, *involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

2. an award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

E. In addition to any relationship or arrangement described in response to Item 9.C. of Part 2A, describe any relationship or arrangement that you or any of your *management persons* have with any issuer of securities that is not listed in Item 9.C. of Part 2A.

F. Include a sample copy of each of your advisory contracts that you are currently using or that you have used during your most recently completed fiscal year.

G. If you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than $500 in fees per *client,* six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients.*

Instructions for Part 2A Appendix 1 of Form ADV: Preparing Your *Wrap Fee Program Brochure*

1. *Who must deliver a wrap fee program brochure, and when?* If you *sponsor* a *wrap fee program,* you must give a *wrap brochure* to each *client* of the *wrap fee program* before or at the time the *client* enters into a *wrap fee program* contract. A *wrap brochure* takes

the place of your advisory firm *brochure* required by Part 2A of Form ADV, but only for *clients* of *wrap fee programs* that you *sponsor.* You must deliver or offer each *wrap fee program client* a free update of the *wrap brochure* each year. If a *client* accepts this offer, you must send the *wrap brochure* to the *client* within seven days after you are notified. See SEC rule 204–3(b) and (e).

2. *How should we offer and deliver our wrap fee program brochure and annual updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *wrap fee program brochure* must be in writing. You may deliver and offer your *wrap fee program brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

3. *Must we also deliver brochure supplements to wrap fee program clients?* Yes. A *wrap brochure* does *not* take the place of any supplements required by Part 2B of Form ADV.

4. *What if we sponsor more than one wrap fee program?* You may prepare a single *wrap brochure* describing all the *wrap fee programs* you *sponsor,* or you may prepare separate *wrap brochures* that describe one or more of your *wrap fee programs.* If you prepare separate *brochures,* each *brochure* must state that you *sponsor* other *wrap fee programs* and must explain how the *client* can obtain *brochures* for the other programs.

5. *Our wrap fee program has multiple sponsors. Must each sponsor create and deliver or offer a separate wrap brochure?* No. If another *sponsor* creates, and delivers to your *wrap fee program clients,* a *wrap brochure* that includes all information required in your *wrap brochure,* you do not have to create and deliver or offer a separate *wrap brochure.* See SEC rule 204–3(e)(2).

6. *We provide portfolio management services under a wrap fee program that we sponsor. Must we deliver both our wrap brochure and our firm brochure to our wrap fee program clients?* No, just the *wrap brochure.* If you or your employees provide portfolio management services under a *wrap fee program* that you also *sponsor,* your *wrap brochure* must describe the investments and investment strategies you (or your employees) will use as portfolio managers. This requirement appears in Item 6.B. of this Appendix.

7. *We provide other advisory services outside of our wrap fee programs. May we combine our wrap brochure into our firm brochure for clients receiving these other services?* No. Your *wrap brochure* must address only the *wrap fee programs* you *sponsor.* See SEC rule 204–3(e)(1).

8. *What if information in a wrap brochure changes?* If any information in your *brochure* becomes materially inaccurate, you must promptly amend the *wrap brochure* by either revising and re-distributing the *wrap brochure* or preparing a sticker to accompany the old *wrap brochure,* as described below.

(a) *Filing the wrap brochure amendment with regulators.*

• If you are registered with the SEC, you must preserve a copy of the revised *wrap brochure* or the sticker, and make the revised *wrap brochure* (and all stickers) available to SEC staff—your *wrap brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *wrap brochure* amendments with the *state securities authorities* to which you make *notice filings.*

• If you are registered with the *state securities authorities,* you must file all *wrap brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients,* promptly after the date of the amendment. To deliver the new information, you can either revise and reprint your *wrap brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *wrap brochure* (or accompany your *wrap brochure* with the stickers) to satisfy your *wrap brochure* delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised *wrap brochure*) to all existing clients. You may use a sticker for any *wrap brochure* amendment (except an *annual updating amendment*), so long as the *wrap brochure* remains readable and clear.

Note: We will notify you when the IARD begins to accept Part 2A (including Appendix 1), and you will have a grace period before you are required to file *wrap fee program brochures* with the IARD.

9. *Must we revise our wrap brochure every year?* Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *wrap brochure.* You must also reprint this revised *wrap brochure,* incorporating all current stickers into the *wrap brochure* text.

Part 2A Appendix 1 of Form ADV: *Wrap Fee Program Brochure*

Item 1 Cover Page

A. The cover page of your *wrap fee program* brochure must state your name, business address, telephone number, and the date of the *wrap brochure.*

Note: If you primarily conduct advisory business under a name different from your full legal name, *and* you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *wrap brochure.*

B. Display the following statements prominently on your cover page:

This brochure provides information that you should consider before becoming a client of the [name of program or programs]. Please contact [name and/or title of contact *person*] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.

Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD for [your name] is [your CRD number].

Item 2 Material Changes

If your *wrap brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure.* The summary must clearly state that it discusses only material changes since the last annual update of the *wrap brochure,* and must provide the date of the last annual update to the *wrap brochure.*

Note: You are not required to give the summary to a *client* or prospective *client* who has not received a previous version of your *wrap brochure.*

Item 3 Table of Contents

Provide a table of contents to your *wrap brochure.*

Note: Your table of contents must be detailed enough so that your *clients* can locate topics easily.

Item 4 Services, Fees and Compensation

A. Describe the services, including the types of portfolio management services, provided under each program. Indicate the wrap fee charged for each program or, if fees vary according to a schedule, provide your fee schedule. Indicate whether fees are negotiable and identify the portion of the total fee, or the range of fees, paid to portfolio managers.

B. Explain that the program may cost the *client* more or less than purchasing such services separately and describe the factors that bear upon the relative cost of the program, such as the cost of the services if provided separately and the trading activity in the *client's* account.

C. Describe any fees that the *client* may pay in addition to the wrap fee, and describe the circumstances under which *clients* may pay these fees, including, if applicable, mutual fund expenses and mark-ups, mark-downs, or spreads paid to market makers.

D. If the *person* recommending the *wrap fee program* to the *client* receives compensation as a result of the *client's* participation in the program, disclose this fact. Explain that the amount of this compensation may be more than what the *person* would receive if the *client* participated in your other programs or paid separately for investment advice, brokerage, and other services. Explain that the *person,* therefore, may have a financial incentive to recommend the *wrap fee program* over other programs or services.

Item 5 Account Requirements and Types of *Clients*

If a *wrap fee program* imposes any requirements to open or maintain an account, such as a minimum account size, disclose these requirements. If there is a minimum amount for assets placed with each portfolio manager as well as a minimum account size for participation in the *wrap fee program,* disclose and explain these requirements. To the extent applicable to your *wrap fee program clients,* describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans.

Item 6 Portfolio Manager Selection and Evaluation

A. Describe how you select and review portfolio managers, your basis for recommending or selecting portfolio managers for particular *clients,* and your criteria for replacing or recommending the replacement of portfolio managers for the program and for particular *clients.*

1. Describe any standards you use to calculate portfolio manager performance, such as industry standards or standards used solely by you.

2. Indicate whether you review, or whether any third party reviews, performance information to determine or verify its accuracy or its compliance with presentation standards. If so, briefly describe the nature of the review and the name of any third party conducting the review.

3. If applicable, explain that neither you nor a third party reviews portfolio manager performance information, and/or that performance information may not be calculated on a uniform and consistent basis.

B. If you, or any of your employees covered under your investment adviser registration, acts as portfolio manager for a *wrap fee program* described in the *wrap brochure,* respond to Items 7.A. (Methods of Analysis, Investment Strategies and Risk of Loss) and 16 (Proxy Voting Policies) of Part 2A of Form ADV.

Item 7 *Client* Information Provided to Portfolio Managers

Describe the information about *clients* that you communicate to the *clients'* portfolio managers, and how often or under what circumstances you provide updated information.

Item 8 *Client* Contact with Portfolio Managers

Explain any restrictions placed on *clients'* ability to contact and consult with their portfolio managers.

Item 9 Additional Information

A. Respond to Item 8 (Disciplinary Information) and Item 9 (Other Financial Industry Activities and Affiliations) of Part 2A of Form ADV.

B. Respond to Items 10 (Participation or Interest in *Client* Transactions and Personal Trading), 12 (Review of Accounts), 13 (Payment for *Client* Referrals), and 18 (Financial Information) of Part 2A of Form ADV, as applicable to your wrap fee *clients.*

Item 10 Index

The *wrap brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Appendix, indicating where in the *wrap brochure* you address each item. The *wrap brochure* you provide to your *clients* does not need to include this index.

If you are registering or registered with one or more *state securities authorities,* you must respond to the following additional Item.

Item 11 Requirements for State-Registered Advisers

Respond to Items 20.D. and 20.F. of Part 2A of Form ADV.

Part 2B of Form ADV: Instructions for Preparing a *Brochure Supplement*

1. *For which supervised persons must we prepare a brochure supplement*? Generally, you must prepare a *brochure* supplement for each *supervised person* who will provide advisory services to *clients.* You should begin, however, by determining whether you are required to deliver or offer the *brochure* supplement for a particular *supervised person* to any *client.* If you have no *client* to whom you must deliver or offer the *brochure* supplement for a particular *supervised person,* then that supervised person does not need a supplement.

As a general rule:

- You must prepare a supplement for each *supervised person* who on a regular basis communicates investment advice to a *client.*
- You must also prepare a supplement for each *supervised person* who formulates advice for a *client* even if the *supervised person* has no *client* contact. However, you do not have to prepare a supplement for a *supervised person* who has no *client* contact and determines investment advice only as part of a committee.
- If your firm has *discretionary authority* over *client* assets, you must also prepare a supplement for each *supervised person* who makes *discretionary* investment decisions for *client* assets even if the *supervised person* has no *client* contact.

2. *To whom must we offer or deliver supplements, and when*? First, determine whether you are required to deliver a firm *brochure* (or *wrap fee program brochure*) to your *client;* if not, then you are not required to deliver any *brochure* supplements to that *client,* either. See SEC rule 204–3(c).

If you are required to deliver a firm *brochure* (or *wrap brochure*) to a *client,* however, then you must also give that *client* the *brochure* supplement for a *supervised person* before or at the time the *supervised person* begins to provide advisory services to that *client.* You must deliver or offer a free update of the supplement each year. If a *client* accepts this offer, you must send the supplement to the *client* within seven days after you are notified. See SEC rule 204–3(b).

A *supervised person* will provide advisory services to a *client* if he or she (a) will regularly communicate investment advice to that *client,* (b) will formulate investment advice for assets of that *client,* or (c) will make discretionary investment decisions for assets of that client. See SEC rule 204–3(b)(1)(B). You may have a *supervised person* deliver his or her own supplement on your behalf, but your firm remains responsible for seeing that the delivery is made.

3. *How should we offer and deliver supplements and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of updated *supplements* must be in writing. You may deliver and offer *supplements using electronic media.* The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

4. *Some of our clients receive only impersonal investment advice from us. Must we deliver or offer supplements to them*? No. You are not required to deliver a *brochure* supplement to *clients who receive only impersonal investment advice* from you. *See* SEC rule 204–3(c)(2).

5. *Must brochure supplements be separate documents*? No. If your firm *brochure* includes all the information required in a *brochure* supplement, you do not need a separate supplement. Smaller firms with just a few *supervised persons* may find it easier to include all supplement information in their firm *brochure,* while larger firms may prefer to use a firm *brochure* and separate supplements.

If your firm *brochure* includes some (but not all) supplement information about a *supervised person,* the supplement can refer the reader to the appropriate section(s) of your firm *brochure* instead of repeating the information.

You may prepare supplements for groups of *supervised persons.* A group supplement, or a firm *brochure* presenting supplement information about *supervised persons,* must present information in a separate section for each *supervised person.*

6. *May we include information not required by an item in our brochure*? Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

7. *What if information in a brochure supplement changes*? If any information in a *brochure* supplement becomes materially inaccurate, you must promptly amend the supplement by either revising and re-distributing the supplement or preparing a sticker to accompany the old supplement, as described below.

(a) *Filing the supplement amendment with regulators.*

- If you are registered with the SEC, you are not required to file the revised supplement or sticker. However, record-keeping rules require you to preserve a copy of the revised supplement or the sticker, and make the revised supplement (and all stickers) available to SEC staff.
- If you are registered with the *state securities authorities,* you must file all supplement amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to all *clients* for whom the *supervised person* provides advisory services, promptly after the date of the amendment. To deliver the new information, you can either revise and reprint the supplement or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only the revised supplement (or accompany the old supplement with the stickers) to satisfy your *brochure* and supplement delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised supplement) to all existing *clients* for whom the *supervised person* provides advisory services. You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

8. *Must we revise a supplement every year*? Yes. When you make your *annual updating*

amendment to your Form ADV, you must revise your *brochure* supplements and reprint them, incorporating all current stickers into the text.

Part 2B of Form ADV: *Brochure* Supplement

Item 1 Cover Page

A. Include the following on the cover page of the supplement.

1. The *supervised person's* name, business address and telephone number (if different from yours).

2. Your firm's name, business address and telephone number. If your firm *brochure* uses a business name for your firm, use the same business name for the firm in the supplement.

3. The date of the supplement.

B. Display the following statements prominently on the cover page of the supplement:

This supplement provides information about [name of *supervised person*] that supplements the [name of advisory firm] brochure. You should have received a copy of that brochure. Please contact [name and/or title of your contact *person*] if you did not receive [name of advisory firm]'s brochure or if you have any questions about the contents of this supplement.

Additional information about [name of *supervised person*] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [name of *supervised person*] is [*supervised person's CRD* number].

Item 2 Educational Background and Business Experience

Disclose the *supervised person's* name, age (or year of birth), formal education after high school, professional designations or attainments, and business background for the preceding five years. If the *supervised person* either has no formal education after high school *or* has no business background, disclose this fact.

Item 3 Disciplinary Information

If there are legal or disciplinary events material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

Items 3.A., 3.B., 3.C., and 3.D. below list specific legal and disciplinary events that you must presume are material for this Item. If the *supervised person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in the *supervised person's* favor, or was reversed, suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the ''date'' of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 3.A., 3.B., 3.C., and 3.D. are not an exclusive list. If the *supervised person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 3.A., 3.B., 3.C., or 3.D. but *is* material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, you must disclose the event.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which the *supervised person.*

1. was convicted of, or pled guilty or nolo contendere (''no contest'') to (a) any *felony;* (b) a *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, the *supervised person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which the *supervised person.*

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of the *supervised person* to act in an *investment-related* business;

(b) barring or suspending the *supervised person's* association with an *investment-related* business;

(c) otherwise significantly limiting the *supervised person's investment-related* activities; or

(d) imposing a civil money penalty of more than $2,500 on the *supervised person.*

C. A *self-regulatory organization* (SRO) *proceeding* in which the *supervised person*

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the *SRO's* rules and was the subject of an *order* by the *SRO* barring or suspending the *supervised person* from membership or from association with other members, or expelling the *supervised person* from membership; otherwise significantly limiting the *supervised person's investment-related* activities; or fining the *supervised person* more than $2,500.

D. Any other *proceeding* revoking or suspending a professional attainment, designation, or license of the *supervised person.*

Note: Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you are not required to disclose it. Your determination, however, is not binding on any other *person*, including any regulator or court. When you review a legal or disciplinary event involving the *supervised person* for materiality, you should consider all of the following factors: (1) the proximity of the *supervised person* to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204–2(a)(14)(ii).

Item 4 Other Business Activities

A. If the *supervised person* is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant, commodity pool operator, or commodity trading advisor, disclose this fact and describe the business relationship, if any, between the advisory business and the other business.

1. If a relationship between the advisory business and the *supervised person's* other financial industry activities creates a material conflict of interest with *clients*, describe the nature of the conflict and any restrictions or internal procedures that you use when there is a conflict of interest, including your procedures for disclosing conflicts to *clients*.

2. If the *supervised person* receives commissions, bonuses or other compensation based on the sale of securities or other investment products, including as a broker-dealer or registered representative, and including distribution or service (''trail'') fees from the sale of mutual funds, disclose this fact. If this compensation is not cash, explain what type of compensation the *supervised person* receives. Explain that this practice gives the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs.

B. If the *supervised person* is actively engaged in any business or occupation for compensation not discussed in response to Item 4.A, above, disclose this fact and describe the nature of that business. If the other business activity or activities provide the primary source of the *supervised person's* income, also disclose this fact.

Item 5 Additional Compensation

If someone who is not a *client* provides an economic benefit to the *supervised person* for providing advisory services, describe the arrangement. For purposes of this Item, economic benefits include sales awards and other prizes, but do *not* include the *supervised person's* regular salary. Any bonus that is based, at least in part, on the number or amount of sales, *client* referrals, or new accounts should be considered an economic benefit, but other regular bonuses should not.

Item 6 Investment Advice and Supervision

Disclose the extent to which the *supervised person* or other *persons* or groups in your firm formulate the investment advice the *supervised person* gives to *clients*. If the

supervised person formulates this investment advice, explain how you supervise the *supervised person*, including how you monitor the advice the *supervised person* provides.

Provide the name, title and telephone number of the *person* responsible for supervising the *supervised person*'s advisory activities on behalf of your firm.

Item 7 Financial Information

If the *supervised person* has been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

If you are registering or registered with one or more *state securities authorities,* you must respond to the following additional Item.

Item 8 Requirements for State-Registered Advisers

A. In addition to the events listed in Item 3 of Part 2B, if the *supervised person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. An award or otherwise being *found* liable in an arbitration claim alleging damages in excess of $2,500, *involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

2. An award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Domestic Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing,* as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain *your principal office and place of business* or of any state in which you are submitting a *notice filing.*

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: _____
Adviser *CRD* Number: _____
Date: _____
Title: _____

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

State-Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain *your principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings,* demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration, or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your *principal place of business* and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: Title: _____
Adviser *CRD* Number: _____
Date: _____
Title: _____

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

***Non-Resident* Investment Adviser Execution**

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing,* as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings,* demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative

proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing.*

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204–2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any person subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents.*

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: _____
Adviser CRD Number: _____
Date: _____
Title: _____

Appendix B—Form ADV–W (Paper Version): Notice of Withdrawal From Registration as an Investment Adviser

Instructions for Form ADV–W

Note: Unless the context clearly indicates otherwise, all terms used in the Form have the same meaning as in the Investment Advisers Act of 1940 and in the General Rules and Regulations of the Commission thereunder (17 Code of Federal Regulations 275).

1. We would like to withdraw from registration as an investment adviser. What do we need to do?

You must determine whether you are filing for partial withdrawal or full withdrawal.

A *partial withdrawal* is when you are withdrawing from investment adviser registration with some, but not all, of the jurisdictions where you are registered (or have an application for registration pending). For example, you would file for partial withdrawal if you are switching from state registration to SEC registration (or vice versa). Similarly, you would file for partial withdrawal if you are a state-registered adviser and are withdrawing from some, but not all, of the states with which you are registered (or have an application for registration pending).

A *full withdrawal* is when you are withdrawing from all of the regulators with which you are registered (or have an application pending).

If you are filing for partial withdrawal and switching from SEC to state registration, you must complete the Status Section, Items 1A through 1D, and the Execution Section. You do not need to complete Items 1E through 8 of Form ADV–W.

If you are filing for partial withdrawal and switching from state to SEC registration, you must complete the entire Form ADV–W.

If you are registered only with the state securities authorities and withdrawing from some, but not all, of the states where you are registered, you must complete the entire Form ADV–W.

If you are filing for full withdrawal, you must complete the entire Form ADV–W.

2. We are going out of business. Does this change how we would answer particular questions on the Form ADV–W?

Yes. The purpose of Item 1D is so that we can contact you if the Form ADV–W is deficient or if we have questions. If you are going out of business, make sure you list in Item 1D an address and phone number at which we can reach the contact employee.

3. I am filing for partial withdrawal. How do I complete Item 2?

If you are ceasing advisory business in any of the jurisdictions from which you are withdrawing, check ''yes.'' On the next line, provide the date on which you are ceasing advisory business in these jurisdictions (however, if you cease conducting advisory business on different dates in different jurisdictions, you must complete a separate Form ADV–W for each different date). The date you provide in this blank must be on or before the date you file Form ADV–W. Then, provide the reasons you are filing for withdrawal (regardless of whether you are filing for partial or complete withdrawal).

You are permitted to ''post-date'' the Form ADV–W to December 31 anytime between November 1 and December 31. You are permitted to enter a cease date of December 31 to avoid being charged state renewal fees in jurisdictions from which you are withdrawing (the IARD does not operate during the last week of each year and you are unable to make any filings during that time). However, you cannot enter any date other than December 31, and you can only enter a December 31 cease date after November 1.

4. I have completed Form ADV–W and filed it with the SEC. When will it become effective?

Your Form ADV–W will become effective when it is filed with the SEC. However, your Form ADV–W will not be deemed ''filed'' until the SEC receives it and determines that it is not deficient. The effective date of a Form ADV–W filed with the state securities authorities may be different.

5. How should I file my Form ADV–W?

You are required to file Form ADV–W electronically on the IARD.

In the event you are unable to submit an electronic filing, you must apply for a temporary or continuing hardship exemption pursuant to rule 203–3. If you can rely on a temporary or continuing hardship exemption, you must mail or fax two executed copies of the Form ADV–W to NASDR, at _____.

Whether you file on the IARD or are permitted to submit paper filings, you must preserve in your records a copy of the Form ADV–W that you file with the SEC.

6. What are the Schedules to Form ADV–W?

Form ADV–W contains two Schedules, Schedule W1 and W2. Your answers to Form ADV–W will determine whether you are required to complete either or both Schedules.

Schedule W1 is a ''continuation page.'' If you have to list additional *persons* whom you have assigned advisory contracts (Item 5), or multiple *persons* or locations with respect to your books and records (Item 8), you must complete Schedule W1.

The names of individuals listed on Schedule W1 must be given in full.

Schedule W2 requires basic financial information relating to your investment advisory business. If you check ''yes'' to Items 3, 4, or 6, you are required to complete Schedule W2.

7. Questions about Item 8. The following examples are intended to assist you in completing Item 8 to Form ADV–W and Sections 8B and 8C of Schedule W1 in the event that multiple *persons* have or will have custody of your books and records, or in the event that your books and records are or will be kept at multiple locations.

a. After I withdraw from registration, two *persons* (*Persons* A and B) will have custody of my books and records, but my books and records will be kept at a single location. How should I complete the Form ADV–W and Schedule W1?

On Form ADV–W, you should check ''yes'' to Item 8.A.1., and ''no'' to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete two Schedules W1. The first would list *Person* A, and the location at

which your books and records will be kept. You would complete a second Schedule W1 that would list *Person* B, and would list (again) the location at which your books and records will be kept.

b. After I withdraw from registration, only one *person* will have custody of my books and records, but they will be kept at three locations (Locations X, Y and Z). How should I complete Form ADV–W and Schedule W1?

On Form ADV–W, you should check ''no'' to Item 8.A.1., and ''yes'' to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete three Schedules W1. The first would list the *person* that will have custody of your books and records, and Location X. The second Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Y. The third Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Z.

c. After I withdraw from registration, two people (*Persons* A and B) will have custody of my books and records, and my books and records will be kept at two locations (Locations Y and Z). Each *person* would have custody of the books and records that are kept at both locations. How should I complete Form ADV–W and Schedule W1?

On Form ADV–W, you should check ''yes'' to Item 8.A.1., and ''yes'' to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete four Schedules W1. The first would list *Person* A and Location Y. The second Schedule W1 would list (again) *Person* A, and would list Location Z. The third Schedule W1 would list *Person* B and Location Y, and the fourth Schedule W1 would list *Person* B and Location Z. On each Schedule W1, you should briefly describe the records that are kept at each location (*e.g.* business and trading records from 1996 through 1999).

8. Who should sign the Form ADV–W?

Copies of the Form ADV–W you file with the SEC must be executed by a *person* you have authorized to file the Form. If you are a sole proprietor, you must sign the Form; if you are a partnership, a general partner must sign the Form in the name of the partnership; if you are an unincorporated organization or association that is not a partnership, the managing agent (an authorized *person* who directs or manages or who participates in the directing or managing of its affairs) must sign the Form in the name of the organization or association; if you are a corporation, a principal officer duly authorized must sign the Form in the name of the corporation. If an officer of any entity is signing the Form, the officer's title must be given.

9. What if I need more space to provide additional information?

If you are filing electronically, add any additional information in the text box asking you to ''describe the books and records kept at this location.'' If you are filing on paper, use the reverse side of Schedule W1 to provide any additional information.

10. What if I do not follow these instructions when completing the Form ADV–W?

If you do not prepare and execute the Form ADV–W as required by these instructions, SEC staff may return the form to you for correction. The SEC's acceptance of the Form, however, is not a finding that you have filed the Form ADV–W as required or that the information submitted is true, correct or complete.

SEC'S COLLECTION OF INFORMATION. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. §§ 80b–3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV–W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV–W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC–2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

BILLING CODE 8010–01–P

FORM ADV-W (Paper Version)
NOTICE OF WITHDRAWAL FROM REGISTRATION AS AN INVESTMENT ADVISER

Form ADV-W

You must complete this Form ADV-W to withdraw your investment adviser registration with the SEC or one or more state securities administrators. We use the term "you" to refer to the investment adviser withdrawing from registration, regardless of whether the adviser is a sole proprietor, a partnership, a corporation, or another form of organization.

WARNING: Complete this form truthfully. False statements or omissions may result in administrative, civil or criminal action against you.

Status

Check the box that indicates what you would like to do:

(i) ☐ Withdraw from registration in all of the jurisdictions with which you are registered (or have an application for registration pending) (a "full withdrawal").

(ii) ☐ Withdraw from registration in some, but not all, of the jurisdictions with which you are registered (or have an application for registration pending) (a "partial withdrawal").

If you are filing for full withdrawal, you must complete all items of this Form ADV-W. If you are filing for partial withdrawal, follow the instructions below for the type of partial withdrawal you are filing.

If you are filing for partial withdrawal, indicate the jurisdictions from which you are withdrawing your investment adviser registration (or application for registration):

(a) ☐ The SEC;

Check this box if you are withdrawing your SEC registration and switching to state registration, or if you are withdrawing your application for SEC registration. If you check this box (a), you must complete only this Status Section, Items 1A through 1D, and the Execution Section. Do not complete Item 1E and Items 2 through 8.

(b) ☐ The state(s) for which the box(es) below are checked:

☐ AL	☐ DC	☐ IA	☐ MN	☐ NM	☐ PR	☐ VA
☐ AK	☐ FL	☐ KS	☐ MS	☐ NY	☐ RI	☐ WA
☐ AZ	☐ GA	☐ KY	☐ MO	☐ NC	☐ SC	☐ WV
☐ AR	☐ GU	☐ LA	☐ MT	☐ ND	☐ SD	☐ WI
☐ CA	☐ HI	☐ ME	☐ NE	☐ OH	☐ TN	
☐ CO	☐ ID	☐ MD	☐ NV	☐ OK	☐ TX	
☐ CT	☐ IL	☐ MA	☐ NH	☐ OR	☐ UT	
☐ DE	☐ IN	☐ MI	☐ NJ	!☐ PA	☐ VT	

If you check this box (b), you must complete all items of this Form ADV-W.

Item 1 Identifying Information

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

_____

The name you enter here must be the same as the name you entered on your last amended Form ADV. Do not report a name change on this Form ADV-W.

B. Your SEC file number (if you are registered with the SEC as an investment adviser):
801- _____

C. Your *CRD* number (if you have a number ("*CRD* number") assigned by the *NASD's CRD* system):

_____

If you do not have a CRD number, skip this Item 1C. Do not provide the CRD number of one of your officers, employees, or affiliates.

D. Name and business address of contact employee:

_____
(name) (title)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

_____
(electronic mail (e-mail) address, if contact employee has one)

The contact employee should be an employee (not outside counsel) who is authorized to receive information and respond to questions about this Form ADV-W.

E. *Principal Office and Place of Business*:

Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

Item 2 Status of Advisory Business

A. Have you ceased conducting advisory business in the jurisdictions from which you are withdrawing? Yes ☐ No ☐

If yes, provide the date you ceased conducting advisory business in the jurisdictions checked in the status section, above:

_____
MM / DD / YYYY

If you ceased conducting advisory business in these jurisdictions on different dates, you must submit a different Form ADV-W for each different date on which you ceased conducting advisory business.

B. Reasons for withdrawal: _____

_____

Item 3 Custody

Do you or a *related person* have *custody* of *client* assets?

Yes ☐ No ☐

If yes, provide the following information:

A. Number of *clients* for whom you have *custody* of cash or securities: _____
B. Amount of *clients'* cash for which you have *custody*: $ _____.00
C. Market value of *clients'* securities for which you have *custody*: $ _____.00
D. Market value of assets other than cash or securities for which you have *custody*: $ _____.00

Item 4 Money Owed to Clients

Have you (i) received any advisory fees for investment advisory services or publications that you have not rendered or delivered; or (ii) borrowed any money from *clients* that you have not repaid? Yes ☐ No ☐

Do not include in your response to this Item 4 any client funds for which you have custody and that you included in your response to Item 3.

If yes, provide the following information:

A. Amount of money owed to *clients* for prepaid fees or subscriptions: $ _____.00
B. Amount of money owed to *clients* for borrowed funds: $ _____.00

Item 5 Advisory Contracts

A. Have you assigned any of your investment advisory contracts to another person?

Yes ☐ No ☐

If yes, provide the following information:

B. Did you obtain the consent of each *client* prior to the assignment of the *client's* contract?

Yes ☐ No

Client consent can be obtained through an actual consent, or can be inferred through the use of a negative consent.

C. Name and business address of the person to whom the contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

D. Have you assigned any of your advisory contracts to any other person? Yes ☐ No

List on Section 5C of Schedule W1 any additional persons to whom you have assigned any of your investment advisory contracts.

Item 6 Judgments and Liens

Are there any unsatisfied judgments or liens against you? Yes ☐ No ☐

Item 7 Statement of Financial Condition

If you answered yes to Items 3, 4, or 6, you must complete Schedule W2, disclosing the nature and amount of your assets and liabilities and your net worth as of the last day of the month prior to the filing of this Form ADV-W.

Item 8 Books and Records

A. 1. Is there more than one person who has or will have custody or possession of any of your books and records?
Yes ☐ No

2. Is there more than one location at which your books and records are or will be kept?
Yes ☐ No

If you answered "no" to both of these questions, complete the following Items 8B and 8C. If you answer "yes" to either of these questions, leave the following Items 8B and 8C blank, and complete Schedule W1. You must complete a separate Schedule W1 for each person who has or will have custody of your books and records at each location. The instructions to Form ADV-W contain additional information to assist you in answering this Item 8 of Form ADV-W.

B. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the name and address of the person who has or will have custody or possession of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

C. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the location at which your books and records are or will be kept.

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

NOTE: Section 204 of the Advisers Act, or similar state law, requires you to preserve your books and records after you have withdrawn from registration.

Execution

I, the undersigned, have signed this Form ADV-W on behalf of, and with the authority of, the adviser withdrawing its registration. The adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form ADV-W, including exhibits and any other information submitted, are true. I further certify that all information previously submitted on Form ADV is accurate and complete as of this date, and that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any person having *custody* or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

FORM ADV-W
Schedule W1
(Paper Version)

Your Name: _____ SEC File No.: _____
Date: _____ CRD No.: _____

Certain items in Form ADV-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

SECTION 5C Other Investment Advisory Contract Assignments
Check here if you are completing this section: ☐

Complete the following information for each *person* to whom you have assigned any advisory contract but who is not listed on Form ADV-W. You must complete a separate Schedule W1 for each *person* (other than the *person* listed in Item 5 of Form ADV-W) to whom you have assigned an advisory contract.

Name and business address of the *person* to whom advisory contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

SECTION 8B *Persons* With Custody or Possession of the Books and Records Kept at the Location Described in Section 8C of this Schedule W1 (below).
Check here if you are completing this section: ☐

Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in Section 8C of this Schedule. If you are required to complete Item 8B of this Schedule, you must complete a separate Schedule W1 for each *person* that has or will have custody of any of your books and records. If the *person* you list below has or will have custody of any of your books and records at any other location, you must complete separate Schedule(s) W1 listing this *person* and each other location of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

SECTION 8C Location of Books and Records of Which the *Person* Listed in Section 8B of this Schedule W1 Has Custody or Possession.
Check here if you are completing this section: ☐

Complete the following information for the location where the books and records of which the *person* listed in Section 8B of this Schedule has or will have custody or possession. If you are required to complete Item 8C of this Schedule, you must complete a separate Schedule W1 for each location at which your records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, you must complete separate Schedule(s) W1 listing this location and each other *person* that has or will have custody of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

Briefly describe the books and records kept at this location. _____

FORM ADV-W Schedule W2 **(Paper Version)**	Your Name: _____ SEC File No.: _____ Date: _____ CRD No.: _____

If you answered "yes" to Items 3, 4, or 6 of Form ADV-W, you are required to complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

ASSETS

Current Assets

Cash	_____
Securities at Market	_____
Non-Marketable Securities	_____
Other Current Assets	_____
Total Current Assets	**$**_____

Fixed Assets

Total Fixed Assets	**$**_____

TOTAL ASSETS	$_____

LIABILITIES & SHAREHOLDERS' EQUITY

Current Liabilities

Prepaid Advisory Fees	_____
Short-Term Loans from Clients	_____
Other Short-Term Loans	_____
Other Current Liabilities	_____
Total Current Liabilities	$_____

Fixed Liabilities

Long-Term Debt Owed to Clients	_____
Other Long-Term Debt	_____
Other Long-Term Liabilities	_____
Total Fixed Liabilities	$_____

Shareholders' Equity

Total Shareholders' Equity (or Deficit)	**$**_____

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$_____

APPENDIX C

OMB APPROVAL	
OMB Number:	3235-___
Expires:	_____
Estimated average burden hours per response	1.00

Form ADV-H
APPLICATION FOR A TEMPORARY OR CONTINUING HARDSHIP EXEMPTION

Item 1 Type of Exemption

You are (check one):

☐ Requesting a Temporary Hardship Exemption; or

☐ Applying for a Continuing Hardship Exemption

A. If you are requesting a temporary hardship exemption, this Form ADV-H is for your (check one)

☐ Initial SEC Application ☐ Annual Updating Amendment to SEC Registration

☐ Other-Than-Annual Amendment to SEC Registration

B. If you are applying for a continuing hardship exemption, this Form ADV-H is for all filings between the date you file this form and _____.
MM / DD / YYYY

Only an adviser that is a "small business" (as defined by SEC rule 0-7) is eligible for a continuing hardship exemption. To determine whether you are eligible for a continuing hardship exemption, review Item 12 of the Form ADV that you filed most recently with the SEC to answer the following questions:

Were you required to answer Item 12 of Form ADV? Yes ☐ No ☐

Did you check "yes" to any question on Item 12 of Form ADV? Yes ☐ No ☐

If you were not required to answer Item 12 or checked "yes" to any question on Item 12, you are not eligible for a continuing hardship exemption and must submit electronic filings to the IARD system.

Item 2 Identifying Information

SEC File number: 801 - _____ CRD Number (if you have one) _____

A. Your full legal name (if you are a sole proprietor, state your last, first, and middle names):

_____

B. *Principal Office and Place of Business*
Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

C. Name and telephone number of the individual filing this Form ADV-H:

_____
(name) (title) (area code) (telephone number)

Item 3 Information Relating to the Hardship

A. If you are filing to request a temporary hardship exemption, attach a separate page that:

1. Describes the nature and extent of the temporary technical difficulties when you attempt to submit the filing in electronic format.

2. Describes the extent to which you previously have submitted documents in electronic format with the same hardware and software that you are unable to use to submit this filing.

3. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit the filing in electronic format in a timely manner.

4. Provides any other reasons why a temporary hardship exemption is warranted.

B. If you are applying for a continuing hardship exemption, your application will be granted or denied based on the following items. You should attach a separate page to this Form ADV-H that:

1. Explains the reason(s) that the necessary hardware and software are not available without unreasonable burden and expense.

2. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit your filings in electronic format in a timely manner.

3. Justifies the time period requested in Item 1 of this Form ADV-H.

4. Provides any other reasons why a continuing hardship exemption is warranted.

Item 4 How to Submit Your Form ADV-H

Sign this Form ADV-H. You must preserve in your records a copy of the Form ADV-H that you file. If you are submitting this Form ADV-H to the NASDR by fax, the number is 301/590-____. If you are sending it by regular or express mail, send ___ copies to _____.

Item 5 Execution

I, the undersigned, have signed this Form ADV-H on behalf of, and with the authority of, the adviser requesting a temporary hardship exemption or applying for a continuing hardship exemption. The undersigned and the adviser represent that the information and statements made in this ADV-H, including any other information submitted, are true. The undersigned and the adviser further agree to waive any claim against the administrator of the IARD for errors made in good faith that may occur when converting to electronic format this Form ADV-H or any paper filing made in reliance of a continuing hardship exemption.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

SEC'S COLLECTION OF INFORMATION. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. §§ 80b-3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV-W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV-W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

Billing Code 8010–01–C

Appendix D—Form ADV–NR—(Paper Version); Appointment of Agent For Service of Process by Non-Resident General Partner and Non-Resident Managing Agent of an Investment Adviser

You must submit this Form ADV–NR if you are a *non-resident* general partner or a *non-resident managing agent* of any investment adviser (domestic or non-resident). Form ADV–NR must be signed and submitted in connection with the adviser's initial application. If the mailing address you list below changes, you must file an amended Form ADV–NR to provide the current address. If you become a *non-resident* general partner or a *non-resident managing agent* after the date the adviser files its initial application, you must file Form ADV–NR with the Commission within 30 days. If you serve as a general partner or *managing agent* for multiple advisers, you must submit a separate Form ADV–NR for each adviser.

1. Appointment of Agent for Service of Process

By signing this Form ADV–NR, you, the undersigned *non-resident general partner* or *non-resident managing agent,* irrevocably appoint each of the Secretary of the SEC, and the Secretary of State, or equivalent officer, of the state in which the adviser referred to in this form maintains its *principal office and place of business,* if applicable, and any other state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing,* as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, order instituting proceedings, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration: (a) arises out of any activity in connection with the investment adviser's business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which the adviser referred to in this Form maintains its principal office and place of business, if applicable, or of any state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing.*

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

BILLING CODE 8010–01–P

Signature

I, the undersigned *non-resident* general partner or *non-resident managing agent*, certify, under penalty of perjury under the laws of the United States of America, that the information contained in this Form ADV-NR is true and correct and that I am signing this Form ADV-NR as a free and voluntary act.

Signature of Partner or Agent:

_____ Date: _____

Printed Name: _____ Title: _____

Mailing Address of Partner or Agent (no P.O. Boxes):

_____

_____

_____

_____

_____

Signature of Investment Adviser:

_____ Date: _____

Printed Name: _____ Title: _____

Adviser CRD Number: _____

Adviser Name: _____

[FR Doc. 00–9036 Filed 4–14–00; 8:45 am]
BILLING CODE 8010–01–C