

June 13, 2000

Via Federal Express

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549 – 0609

Re: Comments on Proposed Rules regarding Electronic Filing by Investment Advisers; SEC
Release IA-1862 (File No. S7-10-00)

Dear Mr. Katz:

The Investment Adviser Committee of the Securities Industry Association (“SIA”)¹, is pleased to submit this comment letter regarding the Securities and Exchange Commission’s (“SEC” or “Commission”) Form ADV/IARD proposal, which, among other things, would provide a framework for electronic filing of Form ADV under the Investment Advisers Act of 1940 (“Advisers Act”) by registered investment advisers. SIA has long supported the concept of one-stop electronic filing because it will ease the regulatory burden on our members, and will also provide investors with better access to meaningful information. If the SEC’s goals for the Investment Adviser Registration Depository (“IARD”) come to fruition, a federally registered investment adviser would be able to satisfy its federal Form ADV, and state notice filing requirements, by a push of a button, as opposed to making up to 50 copies of documents that may run into hundreds of pages. Hopefully, it will also resolve any remaining issues regarding state filings by federally covered advisers. Our members, most of whom are dually registered as investment advisers and broker-dealers, are pleased with the portions of the proposal that will permit them to eliminate duplicative transmissions by linking the Form ADV to the Form BD, and we herein offer recommendations as to how even more duplication can be avoided.

¹ The Securities Industry Association brings together the shared interest of more than 740 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans. The industry generates in excess of \$300 billion of revenues yearly in the U.S. economy and employs approximately 700,000 individuals.

We also support certain of the specific proposed changes to Form ADV as it moves towards electronic filing. For instance, we strongly believe that a narrative disclosure brochure will allow each investment adviser to present disclosure that is more meaningful to its specific client base. Additionally, the proposed simplification of Control Person Disclosure will provide clients with information about those persons or entities that truly are in a position to influence the investment adviser.

Certain of the proposed changes, however, are less helpful or even potentially confusing, and we urge the SEC to reconsider or eliminate them. Such proposals will actually thwart two of the SEC's most commendable and important goals - - providing investors access to meaningful and digestible information, and easing the regulatory and administrative burdens on registered investment advisers. We recognize that achieving a critical balance between maximization of meaningful disclosure, and "information overload" that creates diminishing returns and confusion for investors, is not an easy task. However, SIA strongly believes that, while in some areas the SEC has struck the right balance, there are a number of areas where more flexible or alternative approaches are preferable. Ironically, while an obvious objective of electronic filing is the elimination of paper, the stickering and brochure supplement requirements in the proposed rule will create a literal "blizzard" of additional paper. SIA believes that the proposal has little prospect of achieving its overall goals with respect to the benefits of electronic filing unless these requirements are deleted from the final rule.

I. DELIVERY OF BROCHURE AND AMENDMENTS

A. Delivery of Stickers

As a matter of course, SIA wholeheartedly concurs with the need for an adviser's Form ADV, including its brochure, to be updated promptly to reflect changes in material information. However, for a number of reasons discussed more fully below, SIA strongly disagrees with the proposed requirement that an adviser send updates ("stickers") to advisory clients whenever there is a material change in its brochure. Rather, SIA believes the current approach—filing amendments with the SEC and offering to provide an updated brochure annually--continues to be the most practical and effective approach, particularly since the amendments will be publicly available through the IARD. In that regard, we note that to our knowledge there is a decided lack of complaints that investors were not timely informed of material changes affecting their advisers.

1) Clients Will Continue to Receive Material Information

As the SEC Release notes, the antifraud provisions of the Advisers Act require an adviser to fully disclose information about material conflicts and other information. In addition, depending on the circumstances, material changes to an adviser's operations would often require disclosure to clients as a

matter of both contract law and fiduciary duty. Investment advisers currently operate under these requirements and use various means to inform clients of important developments. SIA believes that the current disclosure requirements are sufficient and that a new duplicative obligation adds little benefit, but enormous cost.

Many items in an adviser's Form ADV and brochure will apply to only some—perhaps a small portion—of an adviser's clients. Requiring that stickers setting forth material changes to the brochure be mailed to *all* clients is unnecessary and in many cases could be confusing or misleading. To take one example, if an adviser plans to begin using commissions from a limited number of client accounts in return for client referrals, disclosure in its Form ADV would be required, necessitating filing an amendment. In addition, those clients whose accounts are affected (i.e., accounts whose commissions might be used in this way) would need to be given adequate disclosure to ensure they did not object. However, sending a brochure sticker explaining this change to *all* of the adviser's clients—most of whom are not affected by the change in any way—is not only excessive, but could quite possibly be misleading in that many clients may erroneously believe this change affects their accounts.

A similarly problematic situation occurs where the client's advisory contract requires disclosure or notice equivalent to or beyond that called for by the adviser's brochure. Under the proposed requirements, the adviser would need to send these clients the brochure update; however, because of contractual obligations the adviser would also need to provide additional information in a separate document. Indeed, the SEC Release itself notes that “delivering a brochure (and supplements) ... may not fully satisfy an adviser's disclosure obligations.” The easier and more effective approach for the adviser to fulfill all of its disclosure obligations, whether required by law or the advisory contract, is to give the adviser the flexibility to notify clients in the manner it believes most appropriate. Not only does this minimize confusion, but clients appreciate—and can better understand—disclosure that is tailored to them and contained in one letter or document.²

2) *The Updated Brochure will be Available, Both Online and via the Annual Delivery Requirement*

While the adviser should have flexibility in how it communicates material changes to clients, the basic requirement that Form ADV be updated promptly would remain in effect. As such, the adviser's updated brochure would be on file with the SEC. Moreover, with the advent of the IARD system, the

² In this regard we note the difficulty of determining what is “material” and, thus, required to be stickered. Although this dilemma will always exist under any regime, a requirement that stickers or updates to the brochure be sent to all clients, coupled with a conservative interpretation of what is “material,” could result in clients being sent numerous stickers over the course of a year. Where an adviser has thousands of clients, the expense and effort involved could be great indeed.

updated brochure would be available online, to which the vast majority of clients would have access. Finally, as noted, as a matter of course, each new client would receive the most updated version of the brochure while existing clients would be offered it annually. To the extent that the SEC is concerned that clients may not be aware that the brochure is updated periodically, the instructions could require disclosure in the brochure explaining that it may be updated from time to time and that the most current information is available on the IARD web site.

Given the logistical difficulties and confusion described above, as well as the fact that advisers would still be subject to applicable antifraud requirements with respect to client disclosure, SIA believes there should be no *requirement* that advisers send clients updates or stickers to the brochure, other than on a request basis.

We believe that the Commission's "stickering" proposal may have been motivated by a desire to provide the ever diminishing universe of investors who do not have electronic access, with timely receipt of brochure amendments. However, this does not justify imposing the enormous economic, administrative and regulatory burdens that stickering would entail, given a lack of any evidence of abuse with respect to the existing requirements.

In the Paperwork Reduction Act discussion in Release IA-1862, the Commission estimates that the average adviser has 49 clients and would presumably have no more than two annual mailings per year, so that compliance with a stickering requirement would entail 49 hours or less per year. SIA respectfully suggests that these numbers bear no relationship to reality with respect to many of our dual registrant members or major independent advisers, who often have ten of thousands of clients, and given the broad range of their services, may need to amend Form ADV numerous times per year. The disclosure regimen proposed by the Commission will likely further increase the frequency of amendments.

B. Proposed Requirement that Brochure be Delivered to Limited Partners

SIA strongly objects to proposed Instruction 3 to Part 2A, which would require that advisers provide a copy of the brochure to each limited partner in a limited partnership for which the adviser acts as general partner. Clearly investors in a limited partnership are entitled to full disclosure regarding their investment, including risks, potential conflicts of interest, fees, etc. However, these disclosures are generally embodied in a Confidential Information Memorandum, Private Placement Memorandum or similar offering document, which is tailored to the particular investment product involved and, thus, of most significance to the investor. To the extent operations or policies of the adviser are material to an investor in a limited partnership, they would be covered in the offering document and accompanying materials. For example, information on the portfolio managers and key personnel directly involved in the fund, conflicts of interest, risks, and expenses are normally included.

Investors in a limited partnership are investing in securities, rather than hiring an investment adviser. In fact, it has been the Commission's position that participating in a limited partnership is the functional equivalent of purchasing a security, not entering into an advisory contract. Like investors in a mutual fund, investors in a limited partnership or similar investment vehicle look to the offering documents for the relevant information. Like a mutual fund prospectus, limited partnership offering documents are structured to provide the information an investor needs to make an informed investment decision. If an adviser acting as a general partner fails to provide, or misstates, material information in these offering documents, it risks liability under the antifraud and other provisions of the federal securities laws. Although a general partner of a limited partnership can decide of its own accord to also provide its brochure to investors, in many cases this is unnecessary and could be confusing to the investor. For example, where the brochure contains information unrelated to the limited partnership, the investor could be confused as to whether the information in the brochure does or does not apply to his or her investment. Moreover, in the event the SEC adopts the requirement that all advisory clients be sent "stickers" when material information changes, the potential confusion would be exacerbated, since the investor could be receiving stickers explaining changes that have little or no relevance to his or her investment in the limited partnership.

We know of no particular cases of abuse, or situations where limited partners have complained, because an adviser's brochure was not provided to limited partners. As such, we believe the current structure—looking to the offering documents to provide necessary information and disclosure—remains the most effective and practical approach.

II. DISCLOSURE ISSUES (PART 2A)³

SIA believes that certain modifications should be made with respect to proposed disclosures regarding fees and compensation, brokerage practices, and investment performance as follows:

A. Fees and Compensation (Item 5)

This item would require the disclosure of advisory fees and "any" other fees the client may pay, such as custodian fees or mutual fund expenses. Additionally, advisers would be required to disclose that clients will incur brokerage and other transaction costs. For advisers who are dual registrants and also receive commission revenue, additional disclosure would be required with respect to the conflicts of interest and how they are handled.

³ Since disciplinary disclosure items are addressed in several parts of the Form ADV proposal, they are discussed separately later in this letter.

For the reasons set forth below, we believe several of the proposed requirements under this item would be burdensome and counterproductive.

First, if a brochure describes multiple services of the adviser, clients must be given all fee schedules (See Instructions for Part 2A, Item 5). This will likely be burdensome for advisers, forcing them to prepare separate brochures for each service to avoid client confusion, even though the basic information about the adviser remains the same. It would also be burdensome for clients, who will often receive information of no relevance to them (i.e., fee schedules for services they do not receive). As an alternative approach, we would recommend that advisers need only deliver the fee schedule of the service applicable to the client in conjunction with the descriptive material they receive regarding the advisory program in which they are enrolling. Advisers could provide additional fee schedule information at a client's request.

Second, advisers should not be required to disclose the level of fees of external custodians selected by a client, since this is a matter already within the client's own knowledge and the adviser does not determine such fees. Indeed, the SEC staff has recognized this fact in other contexts.⁴ With respect to disclosure of mutual fund fees and expenses, we do not believe advisers' fee schedules should incorporate such fees. Certain advisers may recommend a large number of funds, depending on a client's objectives. Any requirement that each of these schedules be incorporated in the adviser's brochure would cause the brochure to be extremely confusing and lengthy. Since the fund prospectus discloses fund fees and expenses, we believe the advisers' fee schedules should only be required to disclose fees that are in addition to any mutual fund fees and expenses, or where there is some set-off. If the SEC believes advisory clients need to be informed regarding the effect of mutual fund fees and expenses, we suggest general narrative disclosure, rather than specific fund fees.

Third, although Form ADV does not require disclosure with respect to the range of brokerage commissions a client may incur, the proposing release suggests that such disclosure is required. Since transaction volume can vary dramatically from year to year and is dependent, among other things, on market conditions, which are not predictable, we do not believe there should be an actual or implied requirement to make such a disclosure.

Finally, the SEC has sought guidance on whether disclosure of performance fees and supposed conflicts inherent in such fee arrangements ought to be disclosed. We believe there should be no mandatory disclosure in Form ADV of the type previously required under the Advisers Act. Generally it is very sophisticated clients who request and are permitted⁵ to enter into performance fee

⁴ See Investment Company Institute, SEC No-Action Letter (pub. Avail. Aug. 24, 1987) (fees charged by custodian selected by clients not subject to "net of fees" requirement of the Clover letter).

arrangements. It has been our members experience that sophisticated fiduciary clients strongly object to the previously required disclosure, since it suggested that, in their efforts to negotiate what they believed were advantageous fee arrangements, they were potentially abrogating their fiduciary responsibilities to be prudent.

In summary, advisers should not be required to provide Form ADV disclosure of information that is otherwise disclosed to clients, or is not within the adviser's direct knowledge.

B. Brokerage Practices (Item 11)

1. *Soft Dollars*

The Commission's proposed Item 11 requires advisers to describe their policies and practices in selecting brokers and in determining the reasonableness of brokers' compensation. The proposal reiterates the requirements of the current Item 12 of Part II of Form ADV and offers useful additional guidance on how to meet those requirements.⁶ However, it also contains additional disclosure requirements which SIA believes are not likely to be meaningful to clients or may mislead clients about certain fairly common practices, particularly with respect to soft dollars.

Under current standards, the adviser is given the flexibility to describe the nature of any conflicts of interest arising from its soft dollar practices and to determine how to make such disclosure (i.e., in advisory contracts, the firm brochure, Form ADV or in a separate letter to affected clients). In contrast, proposed Item 11 specifies the content of the disclosure to be made and mandates that it be included in the firm brochure.⁷

SIA believes that the proposed Item 11 inappropriately dictates the content of the disclosure that an adviser should make regarding the potential conflicts of interest that may arise from an adviser's soft dollar practices. The required disclosure also creates the misleading impression that all soft dollar arrangements are largely motivated by an adviser's desire to save on research expenses, rather than an

⁵ See Rule 205-3 under the Advisers Act.

⁶ Under the current Item 12, an adviser is required to describe the factors considered in selecting brokers, including the receipt of research and other products services (other than trade execution) from brokers. These additional products and services are also known as "soft dollar benefits." Item 12 also requires an adviser to state whether these products and services are used to benefit all advisory clients or just certain accounts.

⁷ An adviser would be required to state in its brochure that it benefits from soft dollar practices because it does not have to produce or pay for the research, other products or other services received from a broker and that it therefore has an incentive to select brokers based on its receiving those benefits, rather than on the broker's ability to achieve best execution. See SEC Release No. IA-1862; 34-42620, Note 173.

interest in obtaining research and other services that will improve investment decisions, thereby benefiting clients. The Commission and Congress have long recognized the benefits to clients of allowing advisers to receive soft dollar benefits.⁸ In many cases, the research and other products obtained by advisers are proprietary to a particular broker-dealer, and/or the adviser would not be capable of reproducing the product or service in-house. This is especially true in the case of small advisers with limited resources.

Rather than mandate specific disclosure that creates the misleading impression that soft dollar practices are not in the interests of clients, SIA believes that advisers should retain the flexibility to describe their soft dollar practices and any resulting conflicts of interests in a manner that is appropriate to their particular situation.

Proposed Item 11 also requires additional disclosure as to whether an adviser “pays up” for soft dollar benefits. It is not clear what is meant by this disclosure requirement. SIA reads this new requirement to mean that an adviser must disclose whether it pays more than the lowest commission rate available (assuming the adviser could make such a determination), which is likely to be the case whenever an adviser receives a product or service in addition to trade execution from the broker, but further clarification is needed.

2. *Transaction Costs*

The Commission’s proposal would require an adviser to explain its practices with respect to negotiating brokerage commissions. In particular, it would require an adviser to explain that clients may pay higher brokerage costs if the adviser does not negotiate commissions or limits the extent to which it negotiates them.

It is not clear what kind of disclosure the Commission is seeking, or how clients would benefit from such disclosure. The fact that an adviser negotiates commissions may have little effect on the commission rate it pays; rather the commission rate paid is a function of many factors – the types of services provided by the broker, the kinds of trades the adviser gives to the broker for execution, ability to maintain confidentiality, and the relative bargaining power of the adviser and the broker. For

⁸ See, e.g., U.S. Securities & Exchange Commission, The Office of Compliance Inspections and Examinations, Inspection Report on Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds, dated September 22, 1998 (“In adopting Section 28(e), Congress acknowledged the important service broker-dealers provide by producing and distributing investment research to money managers”); S. Rep. No. 75, 94th Cong., 1st Sess. 248 (1975); H.R. Rep. No. 123, 94th Cong., 1st Sess. 95 (1975); SEC, Statement on the Future Structure of the Securities Markets; 37 Fed. Reg. 5286, 5290 (Feb. 4, 1972).

example, a small adviser with small orders is not likely to receive a lower commission rate no matter how hard it negotiates.

For these reasons, SIA recommends that the Commission eliminate this requirement. Alternatively, SIA recommends that the Commission clarify that this item does not require disclosure of sensitive proprietary information, such as the details of negotiations with brokers or specifics about commission rates paid.

3. *Commission Recapture*

The Commission has specifically requested comments regarding whether an adviser should be required to explain in its brochure how commission recapture works, the benefits of commission recapture and how a client could participate in recapture. By way of background, commission recapture is a form of directed brokerage which typically involves the payment by a broker to an advisory client of a rebate or percentage of the commissions paid to the broker by the client's account. Based on the experience of our membership, it is an arrangement initiated and negotiated by the client and a broker and, in some cases, pre-dates the relationship between the adviser and the client.

As commission recapture is largely a client- or broker-initiated arrangement, SIA does not believe that advisers are qualified to make the kinds of disclosure regarding commission recapture suggested in the release. SIA also does not believe that it is appropriate for advisers to be put in the position of advocating commission recapture or suggesting to clients where to go to enter into such arrangements. We are also concerned that by making such disclosures, advisers may undertake some responsibility for structuring or monitoring such arrangements.

For these reasons, SIA believes that dissemination of information about commission recapture programs is better left to the brokerage firms which offer such services.

C. Investment Performance (Item 17)

This proposed item would require an adviser that advertises or reports its investment performance to describe the methodology it uses to calculate or present such performance.

We agree that the methodology an advisory firm uses to calculate or present performance remains an important disclosure item for clients; however, the firm brochure is not the appropriate place for such information. Currently, an investment adviser is required to describe certain assumptions upon which performance is calculated in its performance advertising or marketing materials. In many instances, including such disclosure for each of the various investment composites could be voluminous

and also may not be as useful when not accompanied by actual performance numbers. Therefore, we believe that the proposed requirement to place this disclosure in the Form ADV is unnecessary and unhelpful, and it should remain in the actual performance materials distributed to clients. The likelihood of a client remembering, or referring to, the disclosure in Form ADV when considering performance presentations is remote. Allowing this disclosure to remain solely in the relevant marketing or advertising materials should create less confusion, be of greater relevance to clients, and accomplish in a more effective manner the same goals that the proposed Item 17 seeks to achieve.

III. PROPOSED BROCHURE SUPPLEMENT (PART 2B)

The SEC has proposed requiring investment advisers to prepare, maintain and deliver to clients, brochure supplements containing detailed information for every supervised person who formulates, or regularly communicates investment advice to clients. Under this proposal, investment advisers would be required to deliver a separate supplement to each client for each such supervised person no later than the time at which the supervised person began formulating or regularly communicating investment advice to that client.

If adopted, the proposed supplement requirement will dramatically increase investment adviser disclosure obligations, imposing very costly paperwork and additional administrative burdens on all but the smallest SEC-registered investment advisers. Particularly for the many investment advisers with hundreds, or even thousands of employees who would be subject to the proposed supplement requirement, complying with the requirement would be a colossal and extremely costly undertaking, and, correspondingly, adversely affect the costs of offering advisory services to clients. The task of monitoring and controlling the appropriate distribution of the correct supplements in the context of a dual registrant with a large network of offices, would be particularly daunting. Even without considering the cost and effort that adoption of the supplement requirement would entail, SIA does not believe that a need for increased disclosure regarding specific advisory personnel exists. When clients hire an investment adviser, they generally hire a firm and not an individual. It is the reputation, breadth of services, performance and history of the firm that are critical to client decisions to retain an investment adviser. Furthermore, while investment advisory firms necessarily provide advisory services through employees, these employees perform their job functions not as unsupervised freelancers, but rather as employees subject to: (i) legally-required supervision from management⁹; and (ii) a wide array of policies and procedures designed to assure the integrity of the investment advisory services provided by advisers to their clients (more specific disclosure about certain of these policies and procedures would be required by proposed Form ADV Part 2A).¹⁰ Current Form ADV Part II and proposed Form

⁹ Section 203(e)(6) of the Advisers Act requires investment advisers to supervise persons who act on its behalf in order to detect and prevent violations of securities laws.

ADV Part 2A (as proposed to be modified herein), along with various rules under the Advisers Act, require investment advisory firms to make substantial disclosure about the manner in which they provide investment advice to clients, including specific disclosure about senior advisory personnel and other management personnel and specific disclosure about material disciplinary events. In light of the foregoing, SIA believes that requiring investment advisers to make additional employee-specific disclosures would not materially contribute to the wealth of substantive information already disclosed by advisers to clients, and that in light of the extreme cost and administrative burdens it would impose that the SEC reconsider this portion of its proposal.

Furthermore, even if the brochure supplement were not eliminated entirely, as SIA recommends, we believe that an exception to a brochure supplement requirement should be made for supervised persons of dual registrants or of registrants with broker-dealer affiliates, who are also registered representatives or brokers of record (“broker supervised persons”) since they are subject to the extensive public disclosure system already in place for broker-dealer registered representatives. Dual registrants and broker-dealer affiliates already devote substantial resources to complying with this system, and it would be wasteful to require them to create and maintain duplicate, internal disclosure systems for their broker supervised persons. A more appropriate approach would be to simply require that clients be advised as to how this information can be obtained through the CRD system or directly from the adviser. This exception would be justified not only to avoid duplicate, costly disclosure systems, but also by the fact that, in addition to substantial regulation under the Advisers Act, broker-supervised persons and their employers are subject to much more comprehensive regulation than are independent investment advisers. For example, registered representatives are subject to rigorous licensing, continuing education, bonding and disclosure requirements that do not apply to supervised persons who are not registered representatives.

While the exception approach outlined above would be preferable to the more rigid and detailed supplement requirement that the SEC has proposed, we reiterate our firm belief that additional supervised person-specific disclosure is not needed, particularly in light of the proposed improvements to Form ADV Part 2A. Therefore, we hope that the SEC will not proceed with the supplement requirement without further consultation with those industry participants whose advisory businesses would be most affected by such a requirement.

IV. DISCLOSURE OF DISCIPLINARY INFORMATION

¹⁰ For example, Section 204A of the Advisers Act requires investment advisers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by advisers or any of their associated persons.

Disciplinary disclosures regarding adviser firms, affiliates and supervised persons appear in various parts of the Form ADV proposal including Item 11 of Part 1A, Item 8 of Part 2A and Item 3 of Part 2B. To the extent the provisions of these sections may overlap, our comments are intended to apply collectively.

Question 11A(2), Part 1A asks whether the firm or any advisory affiliate has in the past 10 years been charged with any felony. Question 11B(2) asks whether in the past 10 years the firm or any advisory affiliate has been charged with a misdemeanor relating to investments or any fraud. We do not believe that it is appropriate to require disclosure of any felony or misdemeanor charge for which there has not been a conviction. Aside from the constitutional presumption of innocence until proven guilty, the requirement to disclose charges is at odds with the rest of the required disclosures in Item 11, which only require disclosure of regulatory findings, not charges. We urge that questions 11(A)2 and 11(B)2 be eliminated.

The proposed definition of advisory affiliate would include any person who solicits on behalf of the advisory firm, including unaffiliated third party solicitors. We believe that Rule 206(4)-3 under the Advisers Act already imposes a duty on an investment adviser to determine whether a third party solicitor has been subject to any disciplinary orders, and makes it unlawful for the adviser to pay the solicitor if the solicitor has been convicted of certain conduct. We believe that it is not necessary to impose a disclosure obligation on advisory firms with respect to the disciplinary history of unaffiliated third party solicitors and that it would impose significant burdens on investment advisers to obtain and verify such information.

Many employees of advisory firms that are dually registered or have broker-dealer affiliates will be both registered representatives and investment adviser representatives. We believe that it would be appropriate to allow such firms to cross-reference on Form ADV to any disciplinary information included in Form U-4. As stated previously, we also believe such cross-reference makes a burdensome brochure supplement unnecessary.

Proposed Part 2A would require disclosure of certain disciplinary information about the firm and management persons. Item 8A2 would require disclosure if the firm or a management person is the named subject of a pending criminal proceeding. We believe that disclosure should be required only if the firm or a management person is convicted in such a proceeding.

The instructions to Item 8 indicate that if the firm or a management person has been involved in a legal or disciplinary event that is not listed under Items 8A, 8B or 8C, but is material to a client's evaluation of your business or its management, then the event must be disclosed. The definition of "involved" is "engaging in any act or omission, aiding, abetting, counseling, commanding, inducing,

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conspiring with or failing reasonably to supervise another in doing an act.” We believe the definition and the instructions to Item 8 should be revised to make it clear that the firm or a management person is required to disclose only material events that are the result of a final order or judgment. We have the same comments on Item 3 dealing with disciplinary information in the proposed brochure supplement (Part 2B).

Also, in the proposing release, comment was sought regarding whether certain arbitration proceedings should be disclosed. Given the absence of findings of fact or conclusions of law in arbitrations, we do not believe that would be either fair to parties, or helpful to clients. It should be noted that in SRO arbitrations, arbitration panels already have authority to refer matters to the administering SRO where they believe disciplinary action may be appropriate, and any disciplinary findings resulting therefrom would be reportable on Form ADV.

V. CONCLUSION

Aside from the “sticker” and brochure supplement delivery requirements, which we urge the Commission to eliminate, we believe that with reasonable modifications and clarifications many of the other provisions included in the Form ADV/IARD proposal should be adopted. We also wish to note that while our recommendations are presented primarily from a dual registrant or broker affiliate perspective, many of them would be helpful to independent advisers and their clients as well.

We also want to express our appreciation to the Commission for the extraordinary amount of effort they have put into this project. We strongly believe that if the Commission adopts the measures recommended in this letter, investors and advisers will be able to more fully embrace the benefits which technology can bring to the investment advisory community.

If you have any questions regarding this comment letter please contact Michael D. Udoff of SIA staff at (212) 618-0509.

Sincerely,

Jean Margo Reid, Chair
SIA Investment Adviser Committee

cc: Paul F. Royce, Esq.

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