



Securities Industry Association

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August 28, 2001

Via Federal Express

Paul F. Roye, Esq.
Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Supplemental Comments Regarding
Electronic Filing by Investment Advisers
and Proposed Amendments to Form ADV
(IA-1862; File No. S7-10-00)

Dear Mr. Roye:

In June 2000, the Securities Industry Association ("SIA")¹ and various trade associations and other entities, including the Investment Counsel Association of America, Inc. ("ICAA"), filed comment letters with the Commission regarding the above referenced proposal.² Both the SIA and ICAA letters strongly endorsed the adoption of proposed amendments to Part 1 of Form ADV to implement electronic filing of the Form through the IARD system. At the same time, both associations expressed significant concerns with respect to the scope and content of proposed disclosures under Part 2A of Form ADV, the proposed brochure supplement requirement under Part 2B of Form ADV, and new "stickering" and delivery requirements with respect to both parts of Part 2 of the Form.

The Commission subsequently approved the Part 1 amendments and implemented electronic Form ADV filing procedures earlier this year. The transition to electronic filing has been very smooth, and we wish to congratulate the Commission and the NASDR, which administers the IARD system, for the successful implementation of

¹The Securities Industry Association brings together the shared interests of nearly 700 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 nearly 80 million investors directly and indirectly through corporate, thrift and, pension plans. In the year 2000, the industry generated \$314 billion of revenue directly in the U.S. economy and an additional \$110 billion overseas. Securities firms employ approximately 770,000 individuals in the U.S. (More information about SIA is available on its home page: <http://www.sia.com>).

² See respectively letter dated June 13, 2000 from Jean Margo Reid, Chair, SIA Investment Adviser Committee to Jonathan G. Katz, Secretary, Securities and Exchange Commission, and letter dated June 13, 2000 from Karen Barr, ICAA General Counsel to Mr. Katz.

electronic filing. The Commission has deferred final action regarding Part 2 amendments, and we believe that this is, at least in part, attributable to a willingness to give further consideration to the concerns previously expressed by the SIA, ICAA and numerous other commentators.

More recently, the ICAA has filed a supplemental submission with the Commission,³ making certain recommendations with regard to the proposed Part 2 amendments, undoubtedly in an effort to reconcile the Commission's goals with certain concerns raised in the comment letters. We appreciate the ICAA's efforts and strongly endorse its recommendations with respect to Part 2A. However, we believe that, while well-intended, most of its recommendations with respect to the brochure supplement, stickering and delivery requirements are as problematic as the proposed amendments themselves. Therefore, for the reasons set forth below, and as more fully described in our earlier comment letter, SIA does not believe such ICAA recommendations should be adopted, and reiterates its position that the brochure supplement, stickering and mandatory delivery requirements should be eliminated.

Requiring Brochure Supplements For Employees Who "Formulate Advice" or Make Investment Decisions. This ICAA recommendation, if adopted, would not substantially mitigate the tremendous burdens that would be associated with requiring brochure supplements for individual investment adviser personnel. Particularly for a large investment adviser, this cumbersome and largely duplicative new disclosure regime would snare hundreds and, in some cases, thousands of regulated and supervised employees, even if the ICAA's proposed narrower scope were adopted and if a clear definition of "formulate advice" could be devised. We continue to believe that any marginal benefits resulting from the adoption of a brochure supplement requirement would be far outweighed by its substantial burdens, unnecessary paperwork, and other costs. This is particularly true for the many investment advisers also registered as, or affiliated with, broker-dealers. We respectfully refer the staff to our earlier comment letter for a discussion of the specific reasons why we believe the brochure supplement requirement is unnecessary. However, we reiterate our belief that most advisory clients do not want or need another brochure and that there is insufficient reason to impose such a new and burdensome obligation.

Delivery of brochure supplements to retail clients only – This recommendation will not substantially reduce the circumstances in which brochure supplements would have to be distributed. First, firms would be put to the daunting task of classifying (and even monitoring on an ongoing basis) their clients into retail, institutional and "sophistication" categories in order to determine who is required to receive brochure supplements. Second, large investment advisers have thousands (and, in the case of the largest firms, hundreds of thousands) of retail advisory clients. Thus, the burdens and costs of this requirement would continue to be immense. Finally, this approach would not necessarily limit the number of employees for whom supplements would have to be prepared, since most advisory personnel have at least some retail advisory clients. As a result, advisers would still need to create and implement, at substantial cost, an entirely new internal administrative and compliance system.

³Letter dated May 24, 2001 from Karen Barr, ICAA General Counsel to Jonathan G. Katz, Secretary, Securities and Exchange Commission Regarding Release Nos. IA-1862 and 34-42620

Annual Delivery - SIA shares ICAA's view that delivery of a brochure or sticker should not be required each time the brochure is amended or the brochure supplement becomes "materially inaccurate." However, we do not believe that an exception is warranted where an amendment relates to disciplinary history. As we urged in our earlier comment letter, investment advisers should have the flexibility to choose the best, and most effective, means to notify their clients of significant items affecting the advisory relationship. We note that advisers currently are required under Rule 206(4)-4 of the Investment Advisers Act to disclose various disciplinary events. We are not aware of any circumstances that would mandate a change in how these disclosures are delivered.

Finally, SIA believes that the annual delivery of cumulative updated brochures and brochure supplements is not necessary. This requirement (as well as the initial brochure supplement delivery requirement) cuts against a fundamental objective of an electronic filing system -- to substantially reduce the use of paper documents. We think it would be a far better approach, and one consistent with investor protection, to annually advise clients not only of their right to obtain a hard copy brochure, but also of how to electronically access Parts 1 and 2A of the Form ADV and any amendments thereto through the IARD system. Additionally, the offer could inform clients of how to access the CRD Public Disclosure Program regarding registered individuals. We respectfully suggest that, since the NASDR administers both the IARD and CRD systems, links between their respective websites are both logical and reasonable and would assist clients in obtaining relevant information about an investment adviser and its employees.

We hope you will find these comments useful in your deliberations regarding the proposed amendments to Part 2 of Form ADV. If you have any questions regarding this letter, please contact Michael D. Udoff of SIA staff at (212) 618-0509.

Sincerely,

Paul S. Gottlieb
Chairman
SIA Investment Adviser Committee

cc: The Honorable Harvey Pitt
The Honorable Laura Unger
The Honorable Isaac C. Hunt, Jr.
Karen Barr, Esq.
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