



NASAA

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July 13, 2010

Hon. Mary Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Via Hand Delivery

**Re: *Uniform Application for Investment Adviser Registration, Part 2 (Form ADV, Part 2)***

Dear Chairman Schapiro:

Last week we were informed by staff in the Division of Investment Management that the staff will recommend to the Commission at an upcoming open meeting on July 21 the adoption of a version of Form ADV, Part 2 to be used by investment advisers registered only with the SEC. This decision will adversely impact investors and investment advisers, and undermines regulatory cooperation. For these reasons, we ask that the SEC reject this recommendation and instruct the staff to move forward with the Form ADV, Part 2 as a joint form for use by state- and federal- regulated advisers as proposed by the Commission in 2000 and repropose in 2008.

In the alternative, before the Commission considers the adoption of the form, it should at the very least seek public comment on the need for a Part 2 specific to SEC-registered advisers. The promulgation of a form for SEC-registered advisers was not part of the releases in 2000 and 2008 and has not been vetted through the normal rulemaking channels. It would, therefore, seem not only prudent but necessary to ask investors and advisers if this action is warranted.

**Form ADV, Part 2**

The Form ADV has been used by advisers to register with state securities regulators and the SEC for years. Part 2 of the ADV, otherwise known as the "brochure," contains information that is particularly useful to investors and must be provided to potential clients. The brochure contains information such as the fees charged by the adviser, the types of investment strategies used by the adviser, and the education and business background of the adviser.

In 2000 the SEC proposed revisions to Part 2. However, the proposed revisions did not include a suggestion that the Part 2 be changed to a form for SEC-only registrants. It was, in fact, proposed as a single form to be used by advisers regardless of their regulator. The SEC failed to act on the 2000 proposal and the Part 2 remained unchanged.

In 2008, the SEC again published for comment proposed changes to Part 2. Prior to the 2008 publication date, representatives from NASAA met with staff of the Division of Investment Management and SEC Commissioners to discuss various issues concerning the proposed changes to Part 2. As a result of those meetings, it was our clear understanding that the proposed changes to Part 2 would not include a proposal to adopt it as a form to be used by SEC-only registered investment advisers. In fact, the character and tone of these meetings were such that NASAA was led to believe that the joint nature of Part 2 as a single form for use by state- or SEC- registered advisers would not change and, in fact, when the Commission voted to issue the proposed changes, it did so as a joint form.

Regardless of the fact that NASAA was advised by Commission staff that Part 2 would be proposed as a single form and in fact was proposed as such in both 2000 and 2008, we do not understand what has necessitated the decision to pursue the adoption of a bifurcated Part 2. We asked senior staff at the Commission to provide some reasoning for this decision and in response were told that the staff was “constrained” from answering our questions. We are unaware of any investor or industry concerns that would necessitate such a change. Given the absence of such concerns, it would seem unnecessary to move forward with this proposal.

### **A Single Part 2 is Beneficial to Investment Advisers**

As you know, investment advisers register with and are regulated by either the state securities regulators or the SEC depending on the amount they have in assets under management. Under current law, when an adviser reaches \$25 million in assets under management it may move its registration from the states to the SEC. This move becomes mandatory at \$30 million in assets under management. Upon passage of the Dodd-Frank regulatory reform legislation, this number will change to \$100 million.

The switching of regulators by advisers happens on a frequent basis with little inconvenience for advisers. This is true for advisers moving to the states from the SEC or the SEC from the states. They simply make changes online to their existing registration forms and then submit their materials to the appropriate regulator. Introducing a SEC-only Part 2 into the process will inhibit advisers in their efforts to comply with the requirements imposed by their regulator. To the extent that states either retain the current version of Part 2 or adopt a version differing from the SEC’s form, advisers will have to complete a new Part 2 before switching regulators. Adopting a Part 2 specific to SEC-registered advisers will, therefore, impose an unnecessary regulatory burden on investment advisers.

### **A Single Part 2 is Beneficial to Investors**

The Part 2 contains information that is vital to investors when selecting an investment adviser. This information should be available to investors in the same format and with the same content regardless of whether the adviser is registered with the states or the SEC. Creating disparate levels of disclosure based on whether an adviser is regulated by the states or the SEC is not in the best interest of investors. Furthermore, it would complicate the current online system used to display adviser information (“IAPD”). The staff’s plan to require a unique brochure for SEC-registered advisers will only engender more confusion among investors as they attempt to evaluate the qualifications and background of advisers and contravenes the intent of Section

919B of the Dodd-Frank bill, which seeks to improve investor access to information on advisers and brokers.

### **A Single Part 2 Furthers Regulatory Cooperation**

State securities regulators and the SEC have worked cooperatively through the years on various fronts, but this has been especially true in the area of investment adviser regulation. Developing a joint registration form and working together to improve the form has been the rule rather than the exception. SEC staff and state securities regulators worked cooperatively in preparing for the release of proposed changes to the Part 2 in 2008. When asked by Commission staff to review and make comments, we did so promptly and efficiently. When the release was published, NASAA submitted a comment letter that was generally supportive of the release. Any decision to abandon a joint Part 2 is a clear departure from what has been a long-standing cooperative regulatory effort.

### **Conclusion**

If we have misunderstood the Commission's intent to adopt a SEC-only Part 2 and, in fact, a joint form will be adopted as proposed, then we support the Commission in its efforts to move forward with the adoption. However, if that is not the case, we would urge the Commission to take corrective action to address the concerns we have expressed in this letter. As always, we remain willing to work with the Commission staff to facilitate the adoption of a Part 2 that will serve investors and advisers.

Sincerely,



Denise Voigt Crawford,  
Texas Securities Commissioner and  
NASAA President

Copy: Hon. Kathleen L. Casey  
Hon. Elisse B. Walter  
Hon. Luis A. Aguilar  
Hon. Troy A. Paredes  
Hon. Barney Frank  
Hon. Christopher Dodd  
Hon. Spencer Bachus  
Hon. Richard Shelby