NRS

323A Main Street, PO Box 71
Lakeville, Connecticut 06039

Phone 860.435.0200
Fax 860.435.0031
www.nrs-inc.com

Additional Office Locations:
Boston, MA
Chicago, IL
San Diego, CA
New York, NY
Denver, CO
Tampa, FL

January 24, 2011

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

RE: Proposed Rule Amendments: Rules Implementing Amendments to the Investment Advisers Act of 1940
SEC File Number S7-36-10
Release No. IA-3110

Dear Ms. Murphy:

This comment letter is submitted on behalf of National Regulatory Services ("NRS"), the nation's leading compliance consulting and registration firm founded in Lakeville, CT in 1983. NRS provides compliance and consulting services, compliance solutions, national conferences, seminars and the NRS Certified Compliance Professional certificate program to approximately 6000 investment advisers, ranging from small state-registered advisers to the largest global investment management complexes, hedge fund managers and other financial firms. NRS is a division of Accuity, the leading provider of global payment routing data, AML screening software, and services that allow organizations, across multiple industries, to maximize efficiency and facilitate compliance of their transactions. For more than 150 years Accuity has provided its worldwide clients, including banks, corporations and government organizations located in over 150 countries, with solutions and services packaged in multiple formats to serve their diverse needs.

The proposed rule amendments presented in IA Release IA-3110 (the "Release") address certain very important areas arising from industry changes and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Registration, eligibility, transitions and reporting have traditionally been a confusing area for all advisers, i.e., SEC, state and unregistered firms. NRS commends the Division of Investment Management of the Securities and Exchange Commission, ("Commission") for again undertaking to address disclosure, registration practices and implementing the relevant Dodd-Frank provisions in an effort to provide additional guidance, requirements and procedures for all advisers.

As a provider of compliance services and solutions for investment advisers, broker-dealers and other financial institutions, NRS, and our clients, place a premium on clarity and precision in the regulatory environment which promotes transparency regarding the expectations of the regulator as well as the obligations of the regulated.

NRS appreciates the opportunity to comment on the Commission's proposed rules implementing amendments to the Investment Advisers Act. Our comments are presented in the order as presented in the Release.

A. ELIGIBILITY FOR REGISTRATION WITH COMMISSION: SECTION 410

1. Transition to State Registration

NRS strongly supports the Dodd-Frank Act provisions increasing the threshold and eligibility for investment adviser registration with the Commission. We believe the new mid-sized adviser tier is a realistic approach for the industry, the regulated and the regulators. NRS works with many state and Commission registered advisers and assists with consulting services and filings for their transitions from and to state / Commission registrations.

Based upon our experience of almost three decades of assisting advisers with registering and transitioning their adviser registrations, NRS urges and most strongly supports a defined and longer period for the orderly and timely transitions of some 4,100 SEC advisers to state registrations. While the Commission proposes a 90 day transition, NRS agrees with an initial Form ADV 1 filing for Commission registered advisers to report assets under management by 8/20/2011. However, NRS urges the Commission to adopt a longer period for the transition of these mid-sized advisers to state registration because of a number of complicating factors.

The longer transition period is appropriate and very necessary to allow advisers to properly assess what firm and agent registrations are required in which states, possible additional agent examinations, additional specific state filing requirements, e.g., branch office registrations, bonding, financial requirements, specific state disclosures and other amendment filings.

Further, with the somewhat limited state resources available, additional filings will impose an additional burden on states' review and approval processes. There appears to be an increasing number of state regulators' reviews of advisers' registration documents which result in many more findings of deficiencies. State deficiencies may include deficient Form ADV disclosures and/or advisory agreement provisions, among many others. State deficiencies are time consuming to respond to and can significantly delay approvals of an adviser's registration by the state.

Extending the transition time will impact other filing periods such as the year-end renewal filings before the IARD closes for year-end processing and also the first quarter annual updating amendment period for all advisers. The Commission may want to consider a rolling period for transitions based on CRD numbers as has been done in the past.

Extending the transition time allows appropriate time for transition processes and helps avoid the risks of mid-sized advisers acting in an unregistered capacity in states where registration may be required and delayed.

The Commission has noted that FINRA's IARD system has to be reprogrammed and upgraded for these filings which will be an important factor in considering this transition timeline.

NRS strongly supports a proposal that would provide the Commission with the authority to postpone the relevant effective date(s). In connection with this timeline for transitions, NRS urges the Commission to not consider or regress to paper filings. With all the IARD facilities and the years of industry and regulatory reliance on the IARD system, requiring paper filings would be a huge step into the past for the industry, advisers and regulators. Further, possible paper reporting appears to be counter to Dodd-Frank Act purposes of transparency and consistency

2. Amendments to Form ADV

NRS generally supports the new proposals for Form ADV Part 1 Item 2 and believes the bases for registration with the Commission are sufficiently and clearly written.

3. Assets under Management

The Commission has required and the industry has followed the "assets under management" guidelines adopted after NSMIA since 1997. The Commission now seeks to establish a uniform methodology for calculating assets under management to take into account Dodd-Frank Act requirements, systemic risk considerations and more.

The Commission is proposing a new process for identifying and reporting "regulatory assets under management." This new category of assets would include the traditional "assets under management" and classes of assets that advisers previously could choose to not include or report in their reportable "assets under management" and for determining registration eligibility with the Commission.

Based upon the NRS experience of working with many advisers of all sizes for almost three decades, initially and post NSMIA, calculating assets under management has been a less than clear process.

In addition to the current proposals, advisers now have the responsibility to calculate and report "managed assets" for purposes of new Form ADV 2 and "custodied assets" for Form ADV purposes also.

The Commission now proposes to require yet another tier or category of reportable assets creating additional confusion, possible inconsistent and therefore, non-uniform reporting.

NRS submits there is a much better alternative.

NRS strongly urges the Commission to simply modify the existing definition and guidelines for "assets under management" to include the classes of assets that were previously optional to report by advisers. These classes of assets, i.e., proprietary, non-fee, foreign client assets and others would be required to be included in the "assets under management" calculation. This process simplifies the definition, calculation, reporting and eliminates another category of "regulatory assets under management."

The benefits of one standard and uniform methodology implements the Dodd-Frank Act considerations, allows for one calculation for reporting and Commission registration eligibility and has, for the most part, been industry practice for almost fifteen years.

In this same area, NRS strongly supports continuing the existing requirement for only the annual updating of assets under management as part of the Annual Updating Amendment process. NRS makes hundreds of these filings for our advisory clients each year and believes the process works very well. We see and believe advisers, in almost all cases, would agree that assets under management do not change materially from quarter to quarter, barring major firm changes, e.g. acquisitions. In any event, all advisers are required to update Form ADV promptly for material changes, and while doing so, could update assets under management. Additionally, advisers may choose to update assets more often for any reason.

Therefore, NRS strongly opposes any more frequent reporting of assets under management than the existing annual requirement. This is especially our position should the Commission proceed with a second tier of "regulatory assets under management." Requiring multiple reports of two defined categories of assets under management would serve the interests of few and result in additional reporting burdens and inconsistent reporting.

4. Switching between State and Commission Registration

The Commission is proposing to amend Rule 203A-1 to eliminate the $5M buffer for advisers with between $25M and $30M in assets under management. NRS has had many adviser clients who have fallen in this buffer zone which has, in the past, been beneficial for smaller advisers to reflect fluctuation on assets under management especially in view of the large market fluctuations over the past ten years.

With the new three levels of advisers, NRS believes the buffer is just as relevant for the new mid-sized advisers as for the existing smaller advisers. NRS submits and requests that the Commission consider a comparable need for a buffer for mid-sized advisers at the $100 million level of at least $10 million to avoid being whip-sawed between registration requirements. This would represent a ten percent buffer so mid-sized advisers between $90 million and $100 million would have the similar election as smaller advisers to register or not register with the Commission. At $100 million, Commission registration would be mandatory, assuming other eligibility criteria are met.

NRS most strongly supports continuing the annual reporting and updating of assets under management as a tried and true reporting method of calculating and reporting assets only once for consistency and simplicity. All advisers may choose to update more frequently, and based on our experience, very few advisers do so.

5. Exemptions from the Prohibition on Registration with the Commission

The Commission is considering whether proposals to Section 203A(c) of the Act are appropriate to permit advisers to be eligible for registration with the Commission and whether such exemptions should apply to the new mid-sized advisers.

NRS strongly supports the proposal that the exemptions, as may be modified following the comment period, be applicable to all advisers, no matter what amount of assets an adviser may have. Applicability to all promotes uniformity, clarity and a consistent standard for all.

With respect to the specific exemptions and proposals, NRS submits the following comments.

a) NRSROs

NRS supports the Commission's proposal to narrow, but not eliminate, this exemption in Rule 203A-2(a). This proposal would make the exemption consistent with Congressional legislation, the Credit Rating Agency Reform Act, which exempts NRSROs from the definition of an investment adviser unless certain functions are performed, i.e., making recommendations and managing securities. NRS believes consistency across legislative and regulatory requirements is necessary.

b) Pension Consultants

NRS strongly supports the Commission's proposals to retain this exemption, and supports increasing the pension consultant assets under management threshold from $50M to $200M. This category of pension consultants was recognized in NSMIA as clearly having an impact on national markets. NRS submits the premise is still very valid considering the huge pool of pension assets managed or overseen by these professional consultant firms.

Further, institutions and their pension consultants, of all sizes have become a more vocal and a larger presence in the management of their investments. Also, NRS believes this category of professional firms with their national scope of services and pension clients is much better served and more appropriately registered and regulated by the Commission.

c) Multi-state advisers

The Dodd-Frank Act has addressed the multi-state adviser exemption to simplify the requirements of this exemption.

NRS strongly supports the Commission's proposals to amend Rule 203A-2(e) to eliminate the existing thresholds for 30 states and thereafter 25 state registrations to qualify for the exemption. Establishing one uniform standard for all advisers of a 15 state requirement provides a uniform and clear standard.

6. Elimination of Safe Harbor

Based upon our consulting experience with advisers for nearly three decades, and services to many small advisers, NRS believes the safe harbor of Rule 203A-4 has been little used by small advisers. Our experience has shown initially after NSMIA and thereafter, there has been and continues to be confusion among smaller advisers in calculating assets under management. With the new proposals for possibly two categories of assets under management, which NRS again opposes, confusion will continue and increase.

Therefore and because the safe harbor is based on an adviser's reasonable beliefs, NRS supports retaining the existing safe harbor. The Commission would most likely have statistics as to how often the safe harbor has been invoked by small advisers in the past.

7. Mid-sized Advisers

NRS believes there is potentially only a small category of small or mid-sized advisers that are not now registered or required to be registered with either the Commission or a state. NRS is aware of the wide range of state regulatory regimes and processes and supports the Commission's efforts to verify those states which do or will subject advisers to examinations.

B. EXEMPT REPORTING ADVISERS: SECTIONS 407 and 408

With the repeal of the "private adviser exemption" under section 203(b)(3) by the Dodd-Frank Act, the Commission has regulatory responsibilities for these advisers to private funds as a sub-set to be known as "exempt reporting advisers."

The Commission's proposal for a new rule, Rule 204-4, appears to be an appropriate solution for electronic filings on the IARD system of limited information.

NRS supports the proposal for the limited IARD filings for exempt reporting advisers so reporting and information is consistent across this category of new advisers. Because of the nature of the typical large and sophisticated investors for private funds, e.g., venture capital funds, NRS does not support making such information publicly available. Investors and prospective investors receive voluminous offering documents, due diligence questionnaires and more, so limited Form ADV 1 answers publicly available on the IARD would be of little value and limited use.

NRS believes the reporting requirements are designed for the Commission to receive information and be able to identify, track and regulate such new advisers.

NRS also supports only annual filings and amendments of material changes as required for all other advisers. Again, NRS most strongly supports a clear, consistent and simple reporting standard.

Further, NRS does not support any requirement for exempt reporting advisers to prepare or file Form ADV Part 2. Investors and prospective investors are large and sophisticated institutions and individuals who currently receive extensive disclosures for each fund's offering documents.

C. FORM ADV

1. Private Fund Reporting: Item 7.B.

This is an important area, and as noted by the Commission, more than 50 enforcement cases have been brought since January 2009 alleging fraud by hedge fund advisers or hedge funds.

The Commission proposes many new and extensive Form ADV Part 1 Item 7.B. and Schedule D disclosures for private funds.

Generally, NRS believes the Commission is proposing to require disclosure of much more information than is meaningful or necessary. Many registered hedge fund advisers currently disclose some of the proposed disclosures in their Form ADV Part II, such as strategies, performance fee arrangements, investments and more. We believe and fully expect even more will be disclosed with new Form ADV Part 2. Adding or requiring greatly expanded Schedule D disclosures for each private fund which seeks to replicate the due diligence questionnaire information into a public Item 7.B. and Schedule D for each private fund is not necessary and excessively burdensome.

While such information would be of interest to the Commission and examiners, NRS believes such extensive disclosures would not be used by investors or prospective investors who receive offering documents and due diligence questionnaires, which by their nature are private and limited in distribution. Further, due diligence questionnaires are typically tailored either by or for each prospective investor.

NRS does agree that certain limited additional information, such as the proposed seven categories of funds and strategies would be helpful and informative for the Commission in assessing the risk levels of the reported private funds as well as limited public disclosure.

2. Advisory Business Information: Employees, Clients and Advisory Activities

NRS works with thousands of state and Commission registered advisers assisting with initial registrations, ADV amendments and relevant consulting services. All advisers are now in the process of a complete re-write for their Form ADV II to the new ADV 2 requirements. The Commission has eliminated the check-the-box format in Form ADV 2 and now requires much more disclosure in plain English in many areas, especially this Item 5 about clients, employees, including ADV Part 2B Supplements and affiliations.

NRS has supported the new Form ADV Part 2 and for providing more clear and helpful disclosures for clients and prospective clients. NRS strongly urges the Commission to not expand comparable ADV Part 1 disclosures to require specific numbers or disclosures. NRS believes Form ADV 1 is a snapshot and profile of a registered adviser. More detailed and meaningful disclosures are now to be provided in Form ADV Part 2.

3. Other Business Activities and Financial Industry Affiliations: Items 6 and 7.

As noted by NRS in section 2 above, much of the information the Commission proposes to add to Items 6 and 7 should now be included and expanded in the new ADV Part 2. NRS supports the addition of the various related businesses, e.g., trust companies, swap dealers and other new SEC registrants under the Dodd-Frank Act. While Form ADV 1 answers identify certain information, the details, conflicts and other important information is now required and available in Form ADV Part 2.

NRS urges restraint on the Commission's part in greatly expanding questions and disclosures in Form ADV 1.

4. Participation in Client Transactions: Item 8

Please see the NRS comments in section 3 above.

5. Reporting $1 Billion in Assets: Item 1

The Commission is proposing a requirement for advisers with $1 billion in balance sheet assets to so indicate based upon Dodd-Frank Act considerations about "certain excessive incentive-based compensation arrangements." NRS submits that Form ADV reporting of this information is not the correct reporting mechanism. Form ADV is for the registration and regulation of advisers and disclosure of relevant and important information for clients and prospective clients.

6. Other Amendments to Form ADV

The Commission proposes a number of clarifying and additional ADV 1 disclosures which in some instances are appropriate, while others are not. For example, identifying control persons which are public companies is currently disclosed on Schedule A and/or B, and Item 4. Form ADV Part 2A. Requiring disclosures as to the number of qualified custodians used by an adviser may not be meaningful as clients add or terminate their custodian and adviser relationships. Many advisers may have only one or two qualified custodians, e.g., Schwab or Fidelity.

NRS supports the Commission's proposal to identify the CCO as the appropriate contact person in Form ADV Part 1.

NRS also supports the Commission's proposal to allow a third option with respect to being able to remove information if filed in error as appropriate and correct.

With respect to Item 11 and replacing "proceeding" with "hearing or formal adjudication," the Commission should make clear in the questions and definitions that arbitrations are still not required to be reported by Commission registered advisers.

NRS has considered and most strongly urges the Commission to not accelerate the updating amendment deadline for Form ADV Part 1. The 90 days reporting requirement after an adviser's fiscal year end has been in place since 1979. Based upon NRS' extensive experience with advisers, all advisers have many year end and first quarter projects, including financial audits, performance reporting and more. NRS believes shortening the reporting time has little benefit and would impose more of a burden on all advisers with no meaningful benefit seen.

D. OTHER AMENDMENTS

1. Amendments to "Pay-to-Play Rule

The Commission is proposing amendments to the recent Pay-to-Pay Rule for several important purposes seeking consistency with subsequent developments, Dodd-Frank Act provisions, FINRA and MSRB requirements.

For consistency among the various regulatory entities, and for the industry, NRS supports the Commission's proposal to amend Rule 206(4) to be applicable to the new category of "exempt reporting advisers." The Commission notes in footnote 213 of the Release that no amendment of the rule is necessary for foreign private advisers because of a cross reference to section 203(b)(3). NRS recommends that the rule be amended to be as clear as possible in identifying the types of advisers subject to the rule.

In view of the various other regulatory developments and proposed requirements for "municipal advisors," under the Dodd-Frank Act, and the proposed new MSRB rules, NRS strongly supports the SEC Pay-to-Play rule amendments to reference the MSRB rules and to also permit investment advisers to hire registered municipal advisers, including affiliated entities, as solicitors, provided they are subject to the MSRB pay-to play rules.

NRS also supports the clarification of the definition of "covered associate" and replacing "individual" with "person" as an appropriate clarification.

If we may assist further or provide additional information or background on our comments, please let us know. We at NRS would certainly look forward to assisting the Commission in this very important area affecting the entire industry.

Sincerely,

John Gebauer
Managing Director