UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **THE ROBARE GROUP, LTD., MARK L. ROBARE, AND JACK L. JONES, JR.,** **Respondents.**	ADMINISTRATIVE PROCEEDING File No. 3-16047 **Honorable James E. Grimes**

RESPONDENTS' PRE-HEARING BRIEF

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Respondents Robare Group, LTD (the "Robare Group," "Robare" or "the Firm"), Mark L. Robare, and Jack L. Jones, Jr. (collectively, the "Respondents"), by and through their attorneys, hereby submit the following Pre-Hearing Brief in further support of their defense.

I. INTRODUCTION

The allegations in the Division of Enforcement's ("Division") OIP span across a nearly 10-year time period. As a result, this Honorable Tribunal will be presented with long, detailed factual chronology to be applied across a constantly-evolving regulatory framework. Yet, at its core, this case is simple. The Division has concluded that Respondents *intentionally* failed to disclose a potential conflict of interest to its clients. This is false. The evidence presented will show that the Robare Group disclosed all material conflicts to its clients, with the requisite substance and detail. The evidence will further show that the Firm went to great lengths to ensure that the disclosures were proper, by engaging two compliance consultants to review, revise, and advise on the language selected. As if that were not enough, the disclosure language at issue was also reviewed and approved by the Firm's broker-dealer. No issues were detected.

What the Division is really seeking, is to retroactively apply its current interpretation of its current rules to past disclosures, in other words, to punish Respondents for failing, in 2005, to comply with its 2014 interpretation of its rules. Of course, the law does not support such a

theory. The analysis in this case must apply the facts for each relevant time period to the legal standard in place at that time. In doing so, there will be no doubt that: (1) there was no failure to disclose; (2) Respondents, at all times, acted in good faith and without scienter; and (3) neither Robare's customers nor the investing public at large were harmed – or even threatened with harm – for any period of time.

For the reasons stated herein, Respondents request that the Division's charges be dismissed in their entirety, and that their request for sanctions, disgorgement and any other other retributive punishments be denied.

II. FACTS

The Robare Group is an independent SEC-registered Registered Investment Advisor, located in Houston, Texas. It was formed in 2000 by Mark Robare, who has worked in the financial services industry for over 35 years and the securities industry for the last 27 years. Mr. Robare is also a FINRA registered representative, a chartered financial consultant (ChFC) and a certified financial planner (CFP). Mr. Robare co-owns the Robare Group with his son-in-law, Mr. Jones (also FINRA registered representative, CFP and ChFC), who has over 20 years' experience. Over this combined 55 years of experience, Messrs. Jones and Robare have maintained a spotless disciplinary record – save only the instant proceeding.

A. The Robare Group.

The Robare Group is a relatively small advisory firm, with approximately 300 families as clients. Their customers are, primarily, former and current oil and gas executives who are approaching, or just entering retirement, and who have account balances averaging between $400,000 and $800,000. The Firm does relatively little marketing and instead finds most of its clients through referrals by existing – and happy – clients.

Robare actively manages between eight and ten asset management models. Clients are paired with an appropriate model following a complete review of their investment profile – net worth, investment objectives, risk tolerance, etc. This assignment is constantly reassessed and adjusted as necessary over the course of the relationship, based on changing client needs and economic conditions.

The various models are comprised exclusively of various no-transaction-fee mutual funds ("NTF" Funds) (mutual funds that do not charge a commission on the purchase transaction). The commission-free purchase allows Robare to control the amount of fees incurred by its clients and, in turn, increase their ultimate return on their investment. Fee control is a primary pillar of the Robare Group's approach to investing and selection of client investments.

Mr. Robare and Mr. Jones maintain very close contact with their clients, hosting regular events to discuss the status of their portfolios, assess and reassess their goals, and ensure that their needs are being met. Clients are invited to meet with their adviser at least annually, although most clients have far more frequent contact. The Firm's 97% client retention rate speaks loudly to the level of satisfaction amongst its clients.

B. The Commission Agreements and their Disclosure.

This dispute arises out of two agreements with Fidelity Investments ("Fidelity"): (1) a 2004 Commission Schedule and Servicing Fee Agreement ("Commission Agreement"); and (2) a 2012 Investment Advisor Custodial Support Services Agreement[1] ("Custodial Agreement"). These documents are addressed in full, below, but a brief history of their origin is necessary.

[1] The Agreement was executed in 2013, but bears an operative date of 2012.

1. Robare's Relationship with Fidelity.

The Robare Group and its customers have been in business with Fidelity for well over a decade. Robare first started working with Fidelity in 1998, when it was still affiliated with Allmerica, a large broker-dealer, corporate RIA, and insurance company. At that time, Allmerica served as both the corporate RIA and broker-dealer for Robare. Fidelity served as the clearing firm for all of Robare's client accounts. Thus, as early as 1998, all of Robare's clients were also customers of Fidelity.

In 2003, Robare made the decision to sever from Allmerica and become an independent RIA, seeking greater flexibility in managing its customer accounts than Allmerica afforded. So, in early 2003, Robare left Allmerica and became an independent RIA. Triad Advisors Inc. ("Triad") replaced Allmerica as Robare's broker-dealer, but Fidelity stayed on as the clearing firm and custodian of customer accounts. This continued relationship with Fidelity was very important to Robare for three reasons.

First, as noted above, Robare's portfolios were comprised entirely of NTF mutual funds, and Fidelity maintained one of the largest NTF platforms available, meaning it provided Robare (and its clients) a wide variety of options from which to choose. Second, by the time Robare went independent, the Firm and its employees had been operating, and were very familiar with, Fidelity's technology. One of the largest challenges in going independent would be taking its trading in-house, and Robare wanted the transition to be as seamless as possible. Continuing to use the Fidelity platform permitted this and eliminated the oft-bumpy "learning curve" that accompanies the implementation of a new firm's technology.

Third, but of equal importance, Robare's clients were already familiar with Fidelity. By 2003, most of them had been customers of Fidelity for years and already held accounts there. Also, the continued relationship meant the client accounts would not need to be transferred to a

new firm, which can be a complicated (and often irritating) procedure for clients. In light of all these factors, continuing the relationship with Fidelity was the obvious choice.

Approximately a year later, Mr. Robare attended a lunch meeting with Mark Mettleman of Triad, where they ended up discussing Fidelity's NTF platform. Mr. Mettleman informed Mr. Robare that Fidelity had a program available to advisors like Robare, who dealt exclusively in NTF Funds. According to Mr. Mettleman, Fidelity would share with firms that enrolled in the program a small percentage of the fees that Fidelity itself received from certain mutual fund companies which paid Fidelity for its willingness to include those companies' mutual funds on its platform.

Initially, Messrs. Robare and Jones were skeptical, but contacted Fidelity to learn more. Essentially, they had two questions: (1) would their clients incur any new or additional costs, and (2) would this arrangement in any way be expected to affect or influence their investment decisions. The answer to both questions was an emphatic "no." The payments from Fidelity would not come from client accounts, but instead would be carved out of the fees Fidelity itself received from the mutual fund companies.[2] Robare's clients would not be charged any new or additional fees.

As for investment decisions, Robare would not be obligated to purchase any particular mutual funds in any particular amount, nor were they in any way limited in their selection. Instead, they continued to have access to Fidelity's *entire* NTF catalogue of mutual funds – the same funds they had been using for years. It simply meant that, should they select an NTF fund that qualified under the agreement, Robare would receive a small piece of the commission paid by the mutual fund company to Fidelity.

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[2] 17 C.F.R. § 270.12b-1 permits mutual funds to pay certain expenses, including broker's commission, and shareholder service expenses from fund assets. (Exhibit B).

Robare decided to enroll in the program. Yet, there was one more necessary step. The payments Robare would receive from Fidelity had to be routed through Robare's broker-dealer (Triad), which meant that Triad was a required party to the agreement. Under the proposed terms, Fidelity would make the payments to Triad, and Triad would, in turn, pay the amounts to Robare as part of its regular commission payments. Robare presented the agreement to Triad. Triad agreed.

2. The 2004 Commission Agreement.

In April and May of 2004 Triad, Fidelity[3] and the Robare Group signed the "Commission Agreement." The agreement provided, as Mr. Mettleman had outlined, that Fidelity would continue to serve as the clearing firm for Robare's client accounts, and that if the Robare Group purchased certain qualifying NTF mutual funds, Fidelity would pass a small portion of the servicing fees it received from the mutual fund companies on to Robare. It is important that one fact is made absolutely clear: the Robare Group's customers did not pay <u>any</u> of the commissions at issue in this case. To the contrary, the prominent feature of NTF Funds – and the reason the Robare Group uses them – is that they do <u>not</u> charge a commission. Reducing and limiting the commissions and fees in client accounts is a primary focus of Robare Group's business model

Fidelity was responsible for computing the amounts owed under the agreement, which it paid to Triad on a quarterly basis. Mr. Robare and Mr. Jones, as independent-contractor registered representatives of Triad, had each executed Representative Agreements with Triad. Under those agreements, they received 90% of all commissions earned on their broker-dealer business, and Triad retained 10% for itself.

[3] Fidelity's clearing arm – National Financial Services LLC ("NFS") – also signed the agreement.

The Fidelity payments were handled in the same manner as any other commission. Triad received the funds from Fidelity and, per its Representative Agreement with Robare, retained a 10% cut of the amounts received. It then paid the remaining 90% out to Mr. Robare with the rest of his monthly commissions. There is no question that Triad treated the money as a commission. In fact, the Fidelity payment appeared as a single line item on the commission statements – "FIDELITY 12B-1" – followed by the amount paid. No separate accounting was provided, nor were the particular mutual funds that generated the fees identified.

This is not to say that the Robare Group was unaware it was earning these commission payments – of course, it was aware. Yet, the method by which the commissions were paid is very important in this dispute. First, because the commission payments appeared as a single line item among many others, Mr. Robare and Mr. Jones never focused them. That is, while they knew some NTF funds would generate a commission payment, they were not monitoring – because they did not care – which funds did.[4] Instead, they were acting as they should have, i.e., in their clients' best interest, selecting funds based solely on whether the particular NTF fund was in line with their customers' needs, irrespective of whether it would result in the payment of a fee under the Commission Agreement. The possibility of earning a commission never played any role in their investment decisions.

[4] Per the Commission Agreement, Fidelity's own NTF Funds were expressly excepted as eligible, commission-generating funds. Respondents were aware that, if they selected a Fidelity NTF Fund, the transaction would *not* generate a commission. Yet, Respondents continued investing clients in Fidelity NTF Funds, as they had been doing for years prior to the Commission Agreement, because they best suited their clients' needs.

3. Robare Revises its ADV to Disclose the Fidelity Commission Payments and Potential Conflict of Interest.

Because the Commission Agreement provided an economic benefit to Robare from a non-client source, Robare was required to, and did, update its Form ADV. The Firm's ADV prior to the execution of the agreement disclosed, in Schedule F, No. 13A:

> Mark Robare, Carol Hearn & Jack Jones sell securities and insurance products for sales commissions.

After the Commission Agreement was put into place, the Firm updated its ADV and its Schedule F disclosure. The 2005 ADV described the arrangement on Schedule F, No. 13A as follows:

> Certain investment adviser representatives of ROBARE, when acting as registered representatives of a broker-dealer, may receive selling compensation from such broker-dealer as a result of the facilitation of certain securities transactions on Client's behalf through such broker-dealer.
>
> ***
>
> ***These other arrangements may create a conflict of interest.***

(Emphasis added).

From 2005 onward, the Firm continued to update its disclosures many times. In order to ensure that the disclosures were accurate and in keeping with the all requirements Robare engaged two compliance consultants to review, revise and advise on its Form ADV. In addition, its broker-dealer, Triad, regularly reviewed the ADV as part of its supervision of the Firm.

In June 2005, Robare engaged Capital Markets Compliance ("CMC"), a regulatory compliance consultant, to review its policies and procedures and, specifically, its Form ADV. CMC reviewed updated the Form ADV to comply with the new format. It did not note any issues, nor make any revisions to the 13A disclosure on Schedule F.

In November 2007, Robare engaged a new compliance consultant, Renaissance Regulatory Services, Inc. ("Renaissance"). Renaissance also agreed to provide compliance services to Robare, specifically including reviewing and updating Form ADV. Robare's relationship with Renaissance continues through the present day. Although the two parties would execute new consulting agreements over the years, the material terms of their arrangement remained the same. From 2007 onward, Renaissance reviewed the ADV (including Schedule F) many times, along with Robare's other client disclosure documents, and discussed any concerns or issues identified. Over the years, many revisions were made to the documents.[5] At no time, however, did Renaissance identify any issues with Schedule F, No. 13A (pre-2011) or ADV 2A Item 14 (post-2011).

Finally, there is Triad. When Robare joined Triad, Mr. Robare became a Triad Office of Supervisory Jurisdiction ("OSJ"). As a result, Triad assumed supervisory responsibility over the Robare branch, including the RIA. Robare paid Triad $1,500 per quarter for this oversight. Specifically, Triad agreed:

> As you are aware, Triad is responsible for supervising your outside RIA business. Instead of participating in your advisory fees, we will impose a $1,500 quarterly supervisory fee for your outside RIA business.

Beginning in 2003, Triad conducted annual reviews of Robare, during each such review, obtained and reviewed a copy of the current Form ADV. Robare was also required to (and did) send Triad copies of any updates to the ADV. Triad, like CCM and Renaissance, never indicated that there was anything lacking in Robare's disclosures.

[5] The relevant ADV revisions and disclosures are summarized on the chart attached hereto as Exhibit A.

4. The 2012 Custodial Agreement.

The 2004 Commission Agreement remained in place until 2012, at which time Fidelity sent Robare an updated and amended agreement, asking them to execute it. Mr. Robare and Mr. Jones were hesitant to sign. There were several changes in the agreement that gave them pause. First, the new agreement was directly between them and Fidelity – Triad was cut out. Messrs. Robare and Jones were concerned with the arrangement, and why the commission payments would no longer be transmitted through their broker-dealer. They sent the agreement to Triad for review and comment. Triad approved it. They sent it to Renaissance for its review and comment. Renaissance approved it. In 2013, the new agreement was signed. Other than the elimination of Triad, however, the underlying payment structure remained the same. As before, no commissions or fees were charged to Robare's customers.

C. Further Disclosure.

The Forms ADV are the primary disclosure documents provided to customers – in terms of length and content – but they are not always the only disclosures. Throughout this entire time period, in addition to the most current Form ADV, Robare also provided its customers with several other disclosure documents that likewise disclosed the commission payments and the potential conflict of interest they could cause. *See,* Exhibit C.

1. The Robare Group Disclosure Brochure.

One such document was the Disclosure Brochure, which each client was provided (and required to sign, affirming their review and understanding) upon opening an account with Robare. The General Information & Disclosure Brochure stated, in relevant part:

> We do investment advising and financial planning. As an investment advisor we manage your account for a percentage of the assets under our management...Additionally, we may select and monitor other money managers on your behalf. **When we do so, the other money managers pay us a portion of the fees**

> **generated by the referred clients – clients do not pay us directly for this service.** Mark Robare, Carol Hearn, and Jack Jones are also stockbrokers and insurance agents who may earn sales commissions when you purchase securities and/or insurance products through The Robare Group, Ltd. **You should be aware that a conflict may exist between your interests and those of The Robare Group, Ltd.** and if you elect to act upon any of the recommendations, you are under no obligation to effect the transactions through The Robare Group.
>
> ***
>
> For commission accounts, we recommend our broker/dealer – Triad Advisors, Inc. – and if you implement your securities (or insurance) transactions through it, we may earn sales commissions.

Each client received and signed a copy of this disclosure.

2. The Fidelity Client Agreement.

Additionally, each of Robare's clients also opened custodial accounts directly with Fidelity. In opening their account, each customer was provided with a copy of Fidelity's Client Agreement which disclosed, for example:

> **How Fidelity Supports Your Advisor**
>
> Fidelity provides your investment advisor with a range of services and other benefits to help them conduct their business and serve you...
>
> In limited circumstances, we may also make direct payments to your advisor. For example, we may reimburse your advisor for reasonable travel expenses incurred when reviewing our business and practices. **We also may pay your advisor for performing certain back-office, administrative, custodial support and clerical services for us in connection with client accounts for which we act as custodian. These payments may create an incentive for your advisor to favor certain types of investments over others.**

(Emphasis added). All of Robare's customers signed the Client Agreements indicating their receipt and acceptance of these terms.

D. Aftermath of the OIP.

In September 2014, without warning, the SEC filed the instant OIP, accusing the Robare Group of violating the Investment Advisors Act with regard the manner in which it disclosed the above agreements with Fidelity. Before the OIP was even served on Robare, the media picked it up, and reporters started calling the Firm. Robare's immediate reaction was to inform its customers of this development and explain to them why they were learning of it, for the first time, via the news. The Firm immediately sent a letter to its customers advising them of the OIP, the allegations therein and its intent to fight the charges. Robare braced itself for angry phone calls and closed accounts. Neither came. The customer response was 100% supportive. Zero customers left the Firm.

III. ARGUMENT

A. Respondents Did Not Violate Section 206(1) or 206(2) of the Investment Advisors Act of 1940.

In this case, the SEC has alleged that the Robare Group violated Sections 206(1) and (2) of the Investment Advisors Act through the disclosures discussed above. Section 206 provides, in relevant part:

> It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly--
>
> **(1)** to employ any device, scheme, or artifice to defraud any client or prospective client;
>
> **(2)** to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

15 U.S.C. 80b-6. With regard to both the 206(1) and 206(2) allegations, in order to carry its burden of proof, the SEC must prove by a preponderance of the evidence, *Steadman v. S.E.C.*, 450 U.S. 91, 95 (1981) that the Robare Group (1) engaged in fraudulent activities; and

(2) breached its fiduciary duty to its clients by making false or misleading statements or omissions of material fact. *S.E.C. v. Merrill Scott,* 505 F. Supp. 2d 1193 (D. Utah 2007). An investment advisor makes a material omission where it fails to make a "full and fair disclosure of all material facts." *In the Matter of Brandt, Kelly & Simmons, LLC, & Kenneth G. Brandt*, Release No. 289 (June 30, 2005) citing *Capital Gains Research Bureau, Inc.,* 375 U.S. at 191-192, 194, 201.

To establish its 206(1) claim, the SEC must further prove that the Robare Group acted with scienter, which is defined as a "mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 185 (1976); *S.E.C. v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992); *S.E.C. v. Moran*, 922 F. Supp. 867, 896 (S.D.N.Y. 1996). "Recklessness" can satisfy the scienter requirement. *See David Disner*, 52 S.E.C. 1217, 1222 & n. 20 (1997); *see also S.E.C. v. Steadman*, 967 F.2d at 641-42; *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990). "Recklessness" in this context, however, "is not merely a heightened form of ordinary negligence; it is an ***extreme departure*** from standards of ordinary care, which presents a danger of misleading buyers or sellers." *S.E.C. v. Moran*, 922 F. Supp. 867, 897 (S.D.N.Y. 1996) citing *Steadman*, 967 F.2d 636 at 641-42; *See also, In the Matter of Brandt, Kelly & Simmons, LLC, & Kenneth G. Brandt*, Release No. 289 (June 30, 2005) (emphasis added) *quoting Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978).

If the SEC fails to establish any of these elements by a preponderance of the evidence, its claims fail as a matter of law, and the charges in the OIP must be dismissed. *Steadman,* 450 U.S. at 95.

B. The SEC has Failed to Prove that Mr. Robare or the Robare Group Violated Section 206(1).[6]

The SEC has failed to meet its burden of proof that the Robare Group intentionally failed to make a "full and fair" disclosure of any potential conflicts of interest with Fidelity when it filed its Forms ADV between 2005 and 2013.

1. Robare Properly Disclosed the Fidelity Relationship and its Potential Conflict of Interest.

After the execution of the Commission Agreement, the Firm updated its Form ADV to reflect the relationship and disclose that it could create a possible conflict. Over the years, numerous revisions to the disclosure were made by Robare, based largely on the advice and counsel of their compliance consultants. While the revisions were certainly more detailed, the information disclosed remained constant throughout: (1) Robare may receive compensation from its broker-dealer; (2) that the compensation may result from "certain" securities transactions, but not others, made on the client's behalf; and (2) this compensation may create a conflict of interest between Robare and its clients. This, of course, is the Fidelity relationship in a nutshell (with, or without specifically using the name "Fidelity"). Based on the funds held in a particular customers' account, Robare may receive compensation from its broker-dealer (the commissions paid from Fidelity), resulting from certain transactions (qualifying NTF Funds) and this may cause a conflict of interest.

This information fully "disclosed" and "described" the compensation arrangement, which was the only requirement under Form ADV. Question 13A (applicable to the pre-2011 disclosures) directed firms to disclose whether they received compensation from a non-client

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[6] The Commission has not charged Mr. Jones with violating § 206. They do, however, charge him with "aiding and abetting" the alleged violations. To the extent the Section 206 allegations are dismissed, the aiding and abetting claims against Mr. Jones fail as a matter of law, and should be dismissed. The aiding and abetting allegation is address, in full, in Section E, below.

source and, if so, to "describe the arrangement" on its Schedule F. (*See, e.g.,* 2005 Form ADV attached as Exhibit C.

Moreover, the instructions for the revised Form ADV (applicable to post 2011 disclosures) directed firms that:

> As a fiduciary, you must also seek to avoid conflicts of interests with your clients and, at a minimum, **make full disclosure of all material conflicts of interest between you and your clients** that could affect the advisory relationship. This obligation requires that you provide the client with **sufficiently specific facts so that the client is able to understand the conflict of interest you have and the business practices in which you engage,** and can give informed consent to such conflicts or practices or reject them. To satisfy this obligation, you therefore may have to disclose to clients information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require. **You may disclose this additional information to clients in your brochure or by some other means.**

See General Instructions for Part 2 of Form ADV (Exhibit D).

Not only did the disclosures meet and exceed the requirement of a "full" disclosure sufficient to enable the clients to understand the conflict, but, even before the SEC required it, Robare was *already* providing additional disclosures – beyond that required by Form ADV – by another means.

Potential conflicts of interest were further disclosed to Robare's customers in its General Information & Disclosure Brochure which stated: (1) "we may select and monitor other money managers on your behalf;" (2) "[w]hen we do so, the other money managers pay us a portion of the fees generated by the referred clients – clients do not pay us directly for this service;" (3) Mark Robare…and Jack Jones are also stockbrokers and insurance agents who may earn sales commissions when you purchase securities and/or insurance products through The Robare

Group, Ltd.; and (4) "[y]ou should be aware that a conflict may exist between your interests and those of The Robare Group, Ltd."

The above disclosures more than meet the 206(1) requirements that Robare did, at all relevant times, disclose potential conflicts of interest to its customers. As a result, the Division will be unable to satisfy its burden of proof and demonstrate the existence of a material omission, a required element under Section 206(1). For that reason, the claim must be dismissed.

2. Any Potential Conflict Between Robare and its Customers was not Material.

Further, as stated in the revised Form ADV instructions (quoted above), Section 206 required advisers to disclose all "***material*** conflicts of interest between you and your clients." (Exhibit C). Here, the potential conflict of interest was disclosed. Even if there was some defect with the disclosure, however, the conflict itself can hardly be considered "material." First, the agreement had no effect on the investments selected by Robare. Because they were unaware which of the funds did and did not generate the fee, it was impossible for a potential financial incentive to, in any way, impact their fund selection. Thus, the "incentive" which the SEC is concerned about – that the Robare Group may prefer one NTF over another – is entirely academic, as it did not exist in practice.

Moreover, the total revenue earned by Robare as a result of the Commission Agreement amounted to approximately 2.5% of the Firm's total annual revenue,[7] and about 5% of the RIA's business revenue. The commission amounts represented only a very small portion of the Firm's overall revenue it cannot be considered a "material" conflict. Accordingly, because only material omissions are actionable under Section 206(1), the Divisions claims cannot succeed, and should be dismissed.

[7] Total revenue includes revenues from both Robare's investment advisory business and its broker-dealer business.

3. The Robare Group did not Act with Scienter.

Further, even assuming, *arguendo,* that there was a failure to disclose, *and* that the omission was material, the 206(1) claim still cannot succeed. As stated above, a requisite element of this claim is that the SEC prove the Robare Group acted with *scienter* – i.e., an "intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 185 (1976); *S.E.C. v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992). The SEC will be unable to carry its burden on this element. In fact, there is no evidence of scienter in this case. At all times the Respondents acted with the good faith intent of *disclosing,* not *defrauding.*

The absence of scienter is clear from the facts of this case. First, Robare Group updated the Form ADV disclosure to reflect the agreement and the potential conflicts of interest as soon as it was required to do so – there was no delaying, concealing, or forgetting. Second, in an effort to ensure that they complied completely with their disclosure requirements, the Robare Group had the above disclosure reviewed and revised by two independent compliance consultants (CMC and Renaissance), as well as its broker-dealer, Triad (which audited the Firm and reviewed the Form ADV annually).

In cases involving similar facts, the Commission has found that a firm's retention and utilization of consultants, like those here, is evidence of its lack of scienter. For example, in *In the Matter of Brandt, Kelly & Simmons, LLC, & Kenneth G. Brandt,* Release No. 289 (June 30, 2005) (Exhibit E)[8], the ALJ concluded:

> The putative violation was isolated and scienter is absent. BKS and Brandt even hired an independent compliance expert, NRS, to help them with their compliance responsibilities, including preparation of Forms ADV. The record is clear that BKS and Brandt held no information or documents back from NRS and had no intention or motive to hold back documents concerning the $7,500 [payment].

[8] See also, *In the Matter of Brandt, Kelly & Simmons, LLC, & Kenneth G. Brandt*, Release No. 305 (Feb. 10, 2006). (Exhibit F).

Moreover, and further evident of the lack of scienter, the above disclosure was in effect in 2008 when the Robare Group underwent a routine cycle exam with the SEC. The SEC reviewed a copy of the Form ADV containing the above disclosure. No issues or questions relating to the disclosure were raised. To be clear, the Robare Group is not arguing – or even suggesting – that it has somehow transferred its obligation to ensure its disclosures were adequate to the SEC. Yet, the fact that the Firm participated in the exam and received a clean bill of health is evidence that it acted without any intent to play games with the disclosure at issue.

Accordingly, the SEC's allegation that the above disclosure constituted a violation of Section 206(1) should be dismissed in its entirety.

C. The SEC has Failed to Prove that Mr. Robare or the Robare Group Violated Section 206(2).

Section 206(2) prohibits Firms from "engage[ing] in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." The United States Supreme Court has interpreted Section 206(2) as imposing a fiduciary duty on investment advisers, requiring an affirmative obligation of "utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients." *Capital Gains,* 375 U.S.at 191-92, 194 (internal punctuation omitted).

The elements of a 206(2) claim are the same as the above, except that a 206(2) does not require a finding of scienter. The claim does, however, require that the Division establish, by a preponderance of the evidence that the Robare Group acted negligently.

Aside from the issue of scienter, the 206(2) allegation fails for the same reasons set forth in Section B, above, addressing the 206(1) claim. Namely, the Division will fail to show that:

(1) Robare failed to disclose; or (2) that it failed to disclose a material conflict. Accordingly, the SEC's allegation that the above disclosures constituted a violation of Section 206(2) should be dismissed in its entirety.

D. Respondents did not Violate Section 207.

The Division has alleged that Respondents violated Section 207 of the Act, which states:

> It shall be unlawful for any person ***willfully*** to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 80b-3 or 80b-4 of this title, or ***willfully*** to omit to state in any such application or report any material fact which is required to be stated therein.

15 U.S.C.A. § 80b-7. The Division alleges that, in filing its Form ADV, Messrs. Robare and Jones "willfully" filed an inaccurate report with the Commission.

In order to carry its burden on this claim, the Division must show, by a preponderance of the evidence that Messrs. Robare and Jones "willfully" omitted material facts when they cause the Form ADVs to be filed. For the reasons set forth above in response to the § 206(1) allegations, the § 207 claim should likewise be dismissed, given that Robare's Forms ADV did not fail to disclose any material fact.

That is not, however, the only defect in this allegation. The Division must prove that the Respondents acted "willfully." Failure to establish "willfulness" is fatal to a § 207 claim:

> The language in the ADV Form that the SEC argues compelled this disclosure referred not to bank accounts or to the process by which SG & C facilitated firm trades, but rather asked Defendants to disclose the procedures the firm employed to address conflicts of interest created by engaging in firm trading and client trading simultaneously. Gordon, who prepared the ADV Form for SG & C, testified that he believed SG & C's account structure was in compliance with the SEC at the time. This assumption was supported by both the two previous SEC examinations, which failed to note SG & C's account structure as a problem, and the firm's annual surprise examination by independent auditors Deloitte & Touche, which also failed to identify SG & C's account structure as a questionable practice. Indeed, Gordon testified that

> he believed SG & C's account structure was based on the Gardner and Preston Moss No-Action Letter issued by the SEC in 1982. ... Gordon's testimony on these issues was unrebutted by the Commission, and the Court finds Gordon's reliance on these external evaluations reasonable.
>
> In light of the foregoing, the Court is not persuaded that Gordon knew that the SG & C account structure in place at the time violated federal securities laws. Thus, the Court cannot conclude that he intentionally failed to disclose or willfully omitted this information from the firm's filings. Whether Gordon acted with the requisite mental state for his actions to constitute a violation of the Advisers Act is a question of fact. [] Here, the Court does not find that Gordon intentionally or willfully omitted material facts from his SEC filings. As willfulness is an element of a Section 207 violation... the Court concludes that the Commission failed to meet its burden on this claim, and rules in favor of the Defendants[.]

S.E.C. v. Slocum, Gordon & Co., 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004).

The Court's analysis in *Slocum* is useful in the context of the § 207 allegation, which involves similar circumstances. The evidence in this case will likewise show that, at all times, Respondents believed their disclosures were in compliance with the requirements at the time of filing. Additionally, Respondents, like the defendants in *Slocum,* relied both on the advice of their independent consultants and the successful completion of an SEC audit. Under such circumstances, the Division will be unable to meet its burden and establish Respondents acted "willfully," even if their disclosures are somehow deemed inadequate.

For these reasons, the § 207 claim should be dismissed.

E. Aiding and Abetting.

Finally, the SEC has charged Mr. Jones with aiding and abetting the Section 206 violations. As with the other allegation, the Division bears the burden of proof on this allegation and must prove, by a preponderance of the evidence that (1) another party has committed a primary violation; (2) the alleged aider and abettor had a general awareness that his role was part

of an overall activity that was improper; and (3) the alleged aider and abettor knowingly and substantially assisted the principal violation. *Investors Research Corp. v. Sec. & Exch. Comm'n*, 628 F.2d 168, 178 (D.C. Cir. 1980).

As noted above, if the Section 206 allegations fail, the Division will necessarily be unable to establish the first element of this claim, and the aiding and abetting allegations will fail as a matter of law. Regardless of that determination, however, the Division will be unable to establish the second element above. This requirement at a minimum means the accused party must at least have been aware of wrongdoing. *See Decker v. S.E.C.*, 631 F.2d 1380, 1388 (10th Cir. 1980). In the absence of the required knowledge, an aiding and abetting claim fails. *Steadman*, 967 F.2d 636 at 647.

F. The Division's Allegations Relating to Events Occurring Before September 9, 2009 are Time-Barred.

With respect to the Division's allegations for the time period of 2003 through 2009, those claims are time barred pursuant to 28 U.S.C.A. § 2462[9] which states:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced **within five years from the date when the claim first accrued** if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C.A. § 2462 (West). "Statutes of limitations are intended to 'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.' *Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1221 (2013), citing *Railroad Telegraphers v. Railway Express Agency,*

[9] As the Commission is seeking civil penalties for the alleged conduct, there is no question as to whether § 2462 applies to the Commission's claims. *Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1223 (2013).

Inc., 64 S.Ct. 582, 88 L.Ed. 788 (1944). The Supreme Court, in *Gabelli v. S.E.C.,* laid to rest any questions as to when claims by the SEC "accrue" or whether they are subject to any sort of equitable tolling:

> The same conclusion [allowing tolling of limitations periods for private parties who may be unaware of a legal injury] does not follow for the Government in the context of enforcement actions for civil penalties. The SEC, for example, is not like an individual victim who relies on apparent injury to learn of a wrong. Rather, a central "mission" of the Commission is to "investigat[e] potential violations of the federal securities laws." Unlike the private party who has no reason to suspect fraud, the SEC's very purpose is to root it out, and it has many legal tools at hand to aid in that pursuit. It can demand that securities brokers and dealers submit detailed trading information. It can require investment advisers to turn over their comprehensive books and records at any time. And even without filing suit, it can subpoena any documents and witnesses it deems relevant or material to an investigation.
>
> ...Charged with this mission and armed with these weapons, the SEC as enforcer is a far cry from the defrauded victim the discovery rule evolved to protect.

Gabelli v. S.E.C., 133 S. Ct. 1216, 1222 (2013) (internal citations omitted). The latest point at which a claim may accrue is the date on which the last act giving rise to the plaintiff's "complete and present cause of action" occurs. *S.E.C. v. Graham*, No. 13-10011-CIV, 2014 WL 1891418 (S.D. Fla. May 12, 2014).

Here, the SEC filed its OIP on September 10, 2014. Accordingly, under the above statute, to the extent the Division's claims are based on alleged failures to disclose made on or before September 9, 2009, the Division is barred from seeking civil penalties thereon.

Additionally, in 2008 the Division conducted an examination of the Robare Group during which it examined its Form ADV. During the course of the exam the Division investigated the Firm and had the ability to access any and all information regarding the Commission Agreement or Robare's commission statements (both of which reflected the commission arrangement). The

exam concluded in April 2008 and no disclosures issues were raised or otherwise noted. Accordingly, the five-year limitations period began to run on that date and, has since expired.

To the extent the Division's claims are based on alleged failures to disclose occurring before April of 2008, the Division is barred from seeking civil penalties thereon

IV. DISGORGEMENT IS NOT WARRANTED.

Respondents did not receive any illegal or improper commissions or fees and thus no disgorgement can be ordered. Further, even if the Division could prove Respondents' receipt of any illegal commissions, Respondents are entitled to an apportionment of that amount to reflect only the amounts they actually received.

V. SANCTIONS ARE NOT WARRANTED.

A. Because the Division has Failed to Prove a Violation, Sanctions are not Warranted.

The Division will be unable to carry its burden of proof and establish that any of the Respondents violated (or aided and abetted the violation of) Section 206(1), 206(2) or 207. Respondents further request that each of those allegations be dismissed in their entirety.

B. Even if There is a Violation, No Sanction is Warranted.

That being said, in the remote circumstance that some unintentional violation is found to have occurred, Respondents feel compelled to set forth the following argument against the imposition of sanctions.

Sanctions are only authorized where, at the close of hearing, the trier of fact concludes that the respondent has:

> (A) willfully violated any provision of the Securities Act of 1933, the Investment Company Act of 1940, or the Investment Advisors' Act of 1940;
>
> (B) willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person.

15 U.S.C. § 78u-2(a) (Exhibit G). As the above language makes clear, for sanctions to be awarded a finding of willfulness is required.

The appropriateness of any sanction is guided by the public interest factors set forth in *Steadman:*

> (1) the egregiousness of the respondent's actions;
>
> (2) the isolated or recurrent nature of the infraction;
>
> (3) the degree of scienter involved;
>
> (4) the sincerity of the respondent's assurances against future violations;
>
> (5) respondent's recognition of the wrongful nature of his or her conduct; and
>
> (6) the likelihood that the respondent's occupation will present opportunities for future violations.

Steadman v. S.E.C. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 92 (1981) ("Steadman factors"). Other factors that have been considered include:

> (7) the age of the violation (*Marshall Melton,* 56 S.E.C. 695, 698 (2003));
>
> (8) the degree of harm to investors and the marketplace resulting from the violation (*Id.);*
>
> (9) the extent to which the sanction will have a deterrent effect (*Schield Mgmt. Co.,* Exchange Act Release No 53201 (Jan 31, 2006), 87 SEC Docket 848, 862);
>
> (10) whether there is a reasonable likelihood of violations in the future (*KPMG,* 54 S.E.C. 1135, 1191 (2001)).

The Commission weighs these factors in light of the entire record. No one factor is dispositive. *Id.*

Here, assuming a violation exists, the Steadman Factors weigh against the imposition of sanctions. As stated above, there is no indication that Respondents acted with scienter, or with

any evil whatsoever. To the contrary, at all times they strove to comply with the applicable rules and requirements. To do so, they employed two compliance consultants and relied on Triad to advise them as to the propriety of their filings – actions indicative of persons acting in good faith. Additionally, there is no likelihood of future violations. Immediately after the Robare Group learned that the SEC believed its disclosure deficient, it further revised the disclosure to comply with the SEC's preferences.

Moreover, in this case, there is no customer harm. Respondents never made any investment decisions with the intention of incurring greater commission payments. All decisions were made solely based on the best interests of their clients. No commissions earned by Robare were paid by customers. To the contrary, the evidence will show that the Firm's customers continue to trust and support the Firm. This is evidenced by (1) the Firm's 97% customer retention rate; (2) the fact that zero customers left the Firm after this proceeding was instituted; and (3) the supportive response by customers to Robare's decision to fight the Division's allegations. Under the above factors, the assessment of a sanction is not in the public interest.

VI. PRIOR SETTLEMENTS ARE OF NO PRECEDENTIAL WEIGHT

Respondents expect the Division to submit authority in support of its claims in the form of prior settlements with different firms. To the extent the Division cites to these settlements in support of their arguments that the Respondents violated the Act, that authority should be ignored, as it carries no precedential authority. *In the Matter of F.X.C. Investors Corp. & Francis X. Curzio,* 2002 WL 31741561, 10-11 S.E.C. Release No. ID – 218 (Dec. 9, 2002) ("The Division's reliance on settlement orders is misplaced. In the absence of an opinion stating the Division's views on the issues raised, settlements are of dubious value as precedent.") (underlining in original). The same is true for staff no-action letters. *Id.* ("Commission staff no-action and interpretive letters are not expressions of the Commission's views and do not have the

force of law...[t]he views expressed in a no-action letter are only those of the Division issuing it. They are not necessarily the views of any other Division, office, or unit of the Commission.")

VII. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the allegations against it be dismissed in their entirety. In the alternative, were some violation found to have occurred, Respondents respectfully request that, in light of the absence of any aggravating factors and in light of the evidence of their good faith attempt to comply, no sanction be assessed for the conduct at issue in this dispute.

Respectfully submitted this 26th day of January, 2015.

ULMER & BERNE LLP

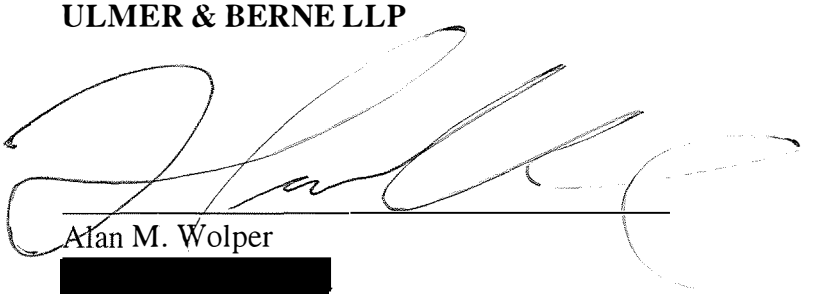

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EXHIBIT A

ROBARE CLIENT DISCLOSURES BY TIME PERIOD

2003 ADV Part II, Item 13A	2005 ADV Part II, Item 13A	March 2011 ADV 2A, Item 14	December 2011 ADV 2A, Item 14
Mark Robare, Carol Hearn & Jack Jones sell securities and insurance products for sales commissions.	Certain investment adviser representatives of ROBARE, when acting as registered representatives of a broker-dealer, may receive selling compensation from such broker-dealer as a result of the facilitation of certain securities transactions on Client's behalf through such broker-dealer. *** These other arrangements may create a conflict of interest.	Certain of our IARs, when acting as registered representatives of Triad may receive selling compensation from Triad as a result of the facilitation of certain securities transactions on your behalf through Triad. Such fee arrangements shall be fully disclosed to clients. In connection with the placement of client funds into investment companies, compensation may take the form of front-end sales charges, redemption fees and 12(b)-1 fees or a combination thereof. The prospectus for the investment company will give explicit detail as to the method and form of compensation.	Certain of our IARs, when acting as registered representatives of Triad may receive selling compensation from Triad as a result of the facilitation of certain securities transactions on your behalf through Triad. Such fee arrangements shall be fully disclosed to clients. In connection with the placement of client funds into investment companies, compensation may take the form of front-end sales charges, redemption fees and 12(b)-1 fees or a combination thereof. The prospectus for the investment company will give explicit detail as to the method and form of compensation. Additionally, we may receive additional compensation in the form of custodial support services from Fidelity based on revenue from the sale of funds through Fidelity. Fidelity has agreed to pay us a fee on specified assets, namely no transaction fee mutual fund assets in custody with Fidelity. This additional compensation does not represent additional fees from your accounts to us.

ROBARE CLIENT DISCLOSURES BY TIME PERIOD

Client Brochure Disclosure (For all relevant time periods, emphasis added)	Fidelity Customer Agreement Disclosure (substantially similar across relevant time periods, emphasis added)
We do investment advising and financial planning. As an investment advisor we manage your account for a percentage of the assets under our management…Additionally, we may select and monitor other money managers on your behalf. **When we do so, the other money managers pay us a portion of the fees generated by the referred clients – clients do not pay us directly for this service.** Mark Robare, Carol Hearn, and Jack Jones are also stockbrokers and insurance agents who may earn sales commissions when you purchase securities and/or insurance products through The Robare Group, Ltd. **You should be aware that a conflict may exist between your interests and those of The Robare Group, Ltd.** and if you elect to act upon any of the recommendations, you are under no obligation to effect the transactions through The Robare Group. *** For commission accounts, we recommend our broker/dealer – Triad Advisors, Inc. – and if you implement your securities (or insurance) transactions through it, we may earn sales commissions.	**How Fidelity Supports Your Advisor** Fidelity provides your investment advisor with a range of services and other benefits to help them conduct their business and serve you… In limited circumstances, we may also make direct payments to your advisor. For example, we may reimburse your advisor for reasonable travel expenses incurred when reviewing our business and practices. **We also may pay your advisor for performing certain back-office, administrative, custodial support and clerical services for us in connection with client accounts for which we act as custodian. These payments may create an incentive for your advisor to favor certain types of investments over others.**

Exhibit A to Respondents' Pre-Hearing Brief

EXHIBIT B

Code of Federal Regulations
Title 17. Commodity and Securities Exchanges
Chapter II. Securities and Exchange Commission
Part 270. Rules and Regulations, Investment Company Act of 1940 (Refs & Annos)

17 C.F.R. § 270.12b–1

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

Effective: December 30, 2013
Currentness

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act (15 U.S.C. 80a–10(d))) to act as a distributor of securities of which it is the issuer, except through an underwriter;

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature;

(b) A registered, open-end management investment company ("Company") may act as a distributor of securities of which it is the issuer: *Provided*, That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing: *And further provided*, That:

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the company, or affiliated persons of such promoters;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements;

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company;

(iv) In the case of an agreement related to a plan:

(A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment;

(4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section; and

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if its board of directors satisfies the fund governance standards as defined in § 270.0–1(a)(7);

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

Note: For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable

business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b)(15 U.S.C. 80a–35 (a) and (b)) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders;

(f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place;

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this rule provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(f)(2)(iii).

(h) Notwithstanding any other provision of this section, a company may not:

(1) Compensate a broker or dealer for any promotion or sale of shares issued by that company by directing to the broker or dealer:

(i) The company's portfolio securities transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the company, unless the company (or its investment adviser):

(i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that broker or dealer; and

(ii) Has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:

(A) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and

(B) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

Credits

[45 FR 73905, Nov. 7, 1980; 60 FR 11885, March 2, 1995; 61 FR 49011, Sept. 17, 1996; 62 FR 51765, Oct. 3, 1997; 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 69 FR 54733, Sept. 9, 2004; 78 FR 79299, Dec. 30, 2013]

SOURCE: 50 FR 37655, Sept. 17, 1985; 50 FR 40485, Oct. 4, 1985; 50 FR 42682, Oct. 22, 1985; 51 FR 9778, March 21, 1986; 52 FR 42284, Nov. 4, 1987; 52 FR 42428, Nov. 5, 1987; 55 FR 7710, March 5, 1990; 56 FR 8124, Feb. 27, 1991; 56 FR 26030, June 6, 1991; 58 FR 19343, April 14, 1993; 58 FR 49427, Sept. 23, 1993; 60 FR 11889, March 2, 1995; 61 FR 13976, March 28, 1996; 62 FR 47938, Sept. 12, 1997; 62 FR 64978, Dec. 9, 1997; 63 FR 13987, March 23, 1998; 64 FR 46834, Aug. 27, 1999; 66 FR 3757, Jan. 16, 2001; 67 FR 19870, April 23, 2002; 67 FR 57295, Sept. 9, 2002; 68 FR 5365, Feb. 3, 2003; 68 FR 36671, June 18, 2003; 69 FR 46389, Aug. 2, 2004; 71 FR 36655, June 27, 2006; 73 FR 71923, Nov. 26, 2008; 77 FR 70120, Nov. 23, 2012; 79 FR 1329, Jan. 8, 2014, unless otherwise noted.

AUTHORITY: 15 U.S.C. 80a–1 et seq.,80a–34(d), 80a–37, 80a–39, and Pub.L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.; Section 270.01–1 also issued under sec. 38(a) [15 U.S.C. 80a–37(a)];; Section 270.0–1(a)(7) is also issued under 15 U.S.C. 80a–10(e);; Section 270.0–11 also issued under secs. 8, 24, 30 and 38, Investment Company Act [15 U.S.C. 80a–8, 80a–24, 80a–29 and 80a–371], secs. 6, 7, 8, 10 and 19(a), Securities Act [15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)] and secs. 3(b), 12, 13, 14, 15(d) and 23(a), Exchange Act [15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78*o*(d) and 78w(a)];; Section 270.6a–5 is also issued under 15 U.S.C. 80a–6(a)(5)(A)(iv)(I).; Section 270.6c–9 is also issued under secs. 6(c) [15 U.S.C. 80a–6(c)] and 38(a) [15 U.S.C. 80a–37(a)];; Section 270.6c–10 is also issued under sec. 6(c) [15 U.S.C. 80a–6(c)];; Section 270.6(e)–3(T) also issued under sec. 6(e), 15 U.S.C. 80a–5(e);; Section 270.8b–11 is also issued under 15 U.S.C. 77s, 80a–8, and 80a–37.; Section 270.10e–1 is also issued under 15 U.S.C. 80a–10(e);; Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are also issued under 15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), and 80a–37(a).; Section 270.12d3–1 is also issued under 15 U.S.C. 80a–6(c).; Section 270.17a–8 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a);; Section 270.17d–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), and 80a–37(a);; Section 270.17e–1 is also issued under 15 U.S.C. 80a–6(c), 80a–30(a), and 80a–37(a);; Section 270.17f–5 also issued under sec. 6(c) (15 U.S.C. 80a–6(c);; Section 270.17g–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), 80a–17(g), and 80a–37(a);; Section 270.17j–1 is also issued under secs. 206(4) and 211(a), Investment Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a));; Section 270.19b–1 is also issued under secs. 6(c) (15 U.S.C. 80a–6(c)), 19(a) and (b) (15 U.S.C. 80a–19(a) and (b), and 38(a) (15 U.S.C. 80a–37(a)).; Section 270.22c–1 also issued under secs. 6(c), 22(c), and 38(a) [15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a)].; Section 270.22e–3T is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a).; Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).; Section 270.24f–2 also issued under 15 U.S.C. 80a–24(f)(4).; Section 270.30a–1 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, and 80a–29.; Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, 80a–29, 7202, and 7241; and 18 U.S.C. 1350, unless otherwise noted.; Section 270.30a–3 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub.L. 107–204, 116 Stat. 745.; Section 270.30b1–1 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, and 80a–29.; Section 270.30b2–1 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub.L. 107–204, 116 Stat. 745.; Section 270.30d–1 is also issued under 15 U.S.C. 78m, 78*o*(d), 80a–8, and 80a–29, and secs. 3(a) and 302, Pub.L. 107–204, 116 Stat. 745.; Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78n, 78*o*(d), 78w(a), 80a–8, 80a–29, and 80a–37;; Section 270.31a–2 is also issued under 15 U.S.C. 80a–30.

Notes of Decisions (21)

Current through Jan. 22, 2015; 80 FR 3181.

End of Document

EXHIBIT C

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	July 31, 2008
Estimated average burden hours per response	9.402

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. Where can I get more information on Form ADV, electronic filing, and the IARD?

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

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

NASD provides information about the IARD and electronic filing on the IARD website: <http://www.iard.com>.

2. 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

3. How is Form ADV organized?

Form ADV contains three 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 14).
- 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 II is your current brochure. You must continue to amend your brochure, deliver it to prospective *clients*, and annually offer it to current *clients*. *See* rule 204-3. You are not required to file amendments to Part II with the SEC.

Note: The SEC has proposed to amend Part II of Form ADV. These changes, proposed as Part 2, have not been adopted at this time. Until the Commission adopts Part 2, the current brochure requirements are in effect, except that you are no longer required to file amendments to Part II with the Commission. *See* rule 204-3.

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

You must amend your Form ADV each year 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. through 2.F., or 2.I. of Part 1B become inaccurate in any way;

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

- information you provided in your brochure 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, 7, 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. If you are amending Part II, do not file the amendment with the SEC.

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.

5. Are there changes to the Part II requirements?

The rules for preparing, delivering and offering Part II have not changed. You can still satisfy these requirements by delivering Part II or a brochure containing at least the information contained in Part II. If you are using Part II, you can continue to use Schedule F as a continuation sheet. If you check "yes" to Item 14 of Part II, prepare and file a balance sheet following instructions in Schedule G. The balance sheet information must be distributed to *clients* as part of your written disclosure statement (regardless of whether you use Part II or a brochure).

If you are an SEC-registered adviser, however, you no longer have to file Part II with the SEC. Instead, you must keep a copy in your files, and provide it to SEC staff upon request. You must update the information in your Part II whenever it becomes materially inaccurate. You can do this by substituting pages, or by affixing a "sticker" replacing the stale information.

If you are a state-registered adviser, you must continue to file Part II with the appropriate *state securities authority* on paper, regardless of whether you are filing Part 1 on paper or electronically through the IARD.

Note: The SEC has proposed, but not adopted, substantial changes to Part II.

6. 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.

7. 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, and in the case of an electronic filing, should be a typed name.

8. How do I file my Form ADV?

Note: Until May 1, 2001, you must also consult the Form ADV Supplemental Instructions for Transition to Electronic Filing.

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.

To file electronically, go the IARD website (<www.iard.com>), which contains detailed instructions for advisers to follow when filing 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 13.

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

9. How do I get started filing electronically?

- First, get a copy of the IARD Entitlement Package from the following web site: <http://www.iard.com>. Second, request access to the IARD system for your firm by completing and submitting the IARD Entitlement Package. The IARD Entitlement Package must be submitted on paper. Mail the forms to: IARD Entitlement Requests, NASD, P.O. Box 9495, Gaithersburg, MD 20898-9495.

- When NASD receives your Entitlement Package, they will assign a *CRD* number (identification number for your firm) and a user I.D. code and password (identification number and system password for the individual(s) who will submit Form ADV filings for your firm). Your firm may request an I.D. code and password for more than one individual. The NASD also will create a financial account for you from which the IARD will deduct filing fees and any *state* fees you are required to pay. If you already have a *CRD* account with NASD, it will also serve as your IARD account; a separate account will not be established.

- Once you receive your *CRD* number, user I.D. code and password, and you have funded your account, you are ready to file electronically.

- Questions regarding the Entitlement Process should be addressed to NASD at 240.386.4848.

10. 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, one or more *state securities authorities* 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 NASD. To determine which *state securities authorities* require SEC-registered advisers to submit *notice filings* and to pay fees, consult the relevant state investment adviser law or *state securities authority*. See General Instruction 1.

If you are granted a continuing hardship exemption to file Form ADV on paper, NASD 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.

11. 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 1.

12. 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 1. 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).

13. 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 published at <http://www.sec.gov/iard>; <http://www.nasaa.org>; and <http://www.iard.com>.

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 14), you are required to pay an additional fee. The amount of the additional fee depends on whether you are filing Form ADV or Form ADV-W. (There is no additional fee for filings made on Form ADV-W.) The hardship filing fee schedule is available at 240.386.4848.

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

If you are required to file electronically but cannot do so, 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 submit the paper version of Form ADV to NASD. NASD will enter your responses into the IARD. As discussed in General Instruction 13, NASD 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 (<http://www.sec.gov/iard>) to obtain a list of firms that provide these services.

15. 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: IARD Document Processing, NASD, P.O. Box 9495, Gaithersburg, MD 20898-9495.

  If you complete Form ADV on paper and submit it to NASD 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.*

16. 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, 100 F Street, NE, Mail Stop 0-25, Washington, DC 20549; Attn: Branch of Registrations & Examinations

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

Federal Information Law and Requirements

Sections 203(c) and 204 of the Advisers Act [15 U.S.C. §§ 80b-3(c) and 80b-4] authorize the SEC to collect the information required by Form ADV. The SEC collects the information for regulatory purposes, such as deciding whether to grant registration. Filing Form ADV is mandatory for advisers who are required to register with the SEC. The SEC maintains the information submitted on this form and makes it publicly available. The SEC may return forms that do not include required information. 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. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. 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 is also 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)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Form ADV: Supplemental Instructions for Electronic Filing

SEC Requirements

SEC rules require advisers that are registered or applying for registration with the SEC to file electronically. All applications for registration filed after December 31, 2000 must be filed electronically through the IARD system. *See* SEC rule 203-1.

State Requirements

Check with the *state securities authorities* of the states in which you have a filing obligation to determine whether you can or must file Form ADV electronically through the IARD. NASAA provides information about state investment adviser laws and state rules, and how to contact a *state securities authority*, on its website: http://www.nasaa.org.

FORM ADV (Paper Version)
UNIFORM 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 own activities, 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 10.

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 plan participants 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. Note that you may not rely on the SEC registration of an Internet investment adviser under rule 203A-2(f) in establishing eligibility for this exemption. See SEC rule 203A-2(f)(iii). 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 12) 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 12 in Item 2.A. You also must file a Form ADV-W to withdraw your SEC registration. See Part 1A Instruction 2.i.

h. **Item 2.A (10): Internet Investment Adviser**. You may check box 10 only if you are eligible for the Internet adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(f). You are eligible for this exemption if:

- you provide investment advice to your *clients* through an interactive website. An interactive website means a website in which computer software-based models or applications provide investment advice based on personal information each *client* submits through the website. Other forms of online or Internet investment advice do not qualify for this exemption;

- you provide investment advice to all of your *clients* exclusively through the interactive website, except that you may provide investment advice to fewer than 15 *clients* through other means during the previous 12 months; and

- you maintain a record demonstrating that you provide investment advice to your *clients* exclusively through an interactive website in accordance with these limits.

i. **Item 2.A(12): Adviser No Longer Eligible to Remain Registered with the SEC.** You must check box 12 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 12) 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.A., enter the date of the succession in Item 4.B., 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 the amendment, make sure you check "yes" to Item 4.A., enter the date of the succession in Item 4.B., 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 1.

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"), but only if 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.

7. Additional Information.

If you believe your response to an item in Form ADV Part 1A requires further explanation, or if you wish to provide additional information, you may do so on Schedule D, in the Miscellaneous section. Completion of this section is optional

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; and (3) all of your current ***employees*** (other than ***employees*** performing only clerical, administrative, support or similar functions).

   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; Part 1B, Item 2]*

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, Introductory Text, Item 2]*

3. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs]*

4. **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]*

5. **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) is 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, Items 2, 7, 10, 11, 12, Schedules A, B, C, D; Regulatory DRP]

6. **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, Item 2]*

7. **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, Instructions, Item 8; Part 1B, Instructions]*

8. **Employee:** This term includes an independent contractor who performs advisory functions on your behalf. *[Used in: Part 1A, Instructions, Items 1, 5, 7, 11]*

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]*

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; DRPs]*

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; DRPs]*

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]*

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 5]*

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 5]*

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, Instructions]*

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 1A, Instructions]*

17. **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; DRPs; Part 1B, Item 2]*

18. **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]*

19. **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]

20. **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: General Instructions; Form ADV-NR]*

21. **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]*

22. **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: General Instructions; Part 1A, Item 11; DRPs]*

23. **NASD CRD** or **CRD:** The Web Central Registration Depository ("CRD") system operated by the NASD for the registration of broker-dealers and broker-dealer representatives. *[Used in: Part 1A, Item 1; Form ADV-W, Item 1]*

24. **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: General Instructions; Form ADV-NR]*

25. **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: General Instructions; Part 1A, Item 2; Execution Page(s); Form ADV-W]*

26. **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; Schedule D; DRPs]*

27. **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]*

28. **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]*

29. **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, Instructions, Items 1 and 2; Schedule D; Form ADV-W, Item 1]*

30. **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 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 1B, Item 2]*

31. **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; Form ADV-W, Item 3]*

32. **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"), NASD and New York Stock Exchange ("NYSE") are self-regulatory organizations. *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2]*

33. **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]*

34. **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]*

35. **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]*

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):

- ☐ Submit an initial application to register as an investment adviser with the SEC.
- ☐ Submit an initial application to register 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.

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)

If this address is a private residence, check this box: ☐

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 state securities authorities, 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)

If this address is a private residence, check this box: ☐

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)

I. Do you have World Wide Web site addresses? Yes ☐ No ☐

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. 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.

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(11), 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(12). 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 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.

☐ (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) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

☐ (11) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

☐ (12) are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. 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	☐ VI
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ VA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WA
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WV
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	☐ WI
☐ 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.

B. In 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

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser?
☐ Yes ☐ No

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: _____
(mm/dd/yyyy)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." 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

A. Approximately how many *employees* do you have? Include full and part-time *employees* 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 1,000)

B.

(1) Approximately how many of these *employees* 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 1,000)

(2) Approximately how many of these *employees* 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 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

(3) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

☐ 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 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once – do not count each of the firm's employees that solicit on your behalf.

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 500)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	None	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.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

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): _____

Do not check 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.

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 500)

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

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 all of your *advisory affiliates* and any *person* that is under common *control* with you.

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), you must list on Section 7.A. of Schedule D all your related persons that are investment advisers. If you checked Item 7.A.(1), you may elect to list on Section 7.A. of Schedule D all your related persons that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

B. Are you or any *related person* a general partner in an *investment-related* limited partnership or manager of an *investment-related* limited liability company, or do you advise any other "private fund," as defined under SEC rule 203(b)(3)-1? ☐ Yes ☐ No

If "yes," for each limited partnership, limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

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*.

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. If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients*' accounts but you do not otherwise have *custody* of your *clients*' funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2).

	Yes	No
A. Do you have *custody* of any advisory *clients'*:		
(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.

Item 11 Disclosure 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 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 *employees* performing only clerical, administrative, support or similar functions); (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. 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.

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.

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*?	☐	☐

If you are registered or registering with the SEC, you may limit your response to Item 11.A(2) to charges that are currently pending.

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)?	☐	☐

If you are registered or registering with the SEC, you may limit your response to Item 11.B(2) to charges that are currently pending.

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?	☐	☐
(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)?	☐	☐

	Yes	No
(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?	☐	☐
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)?	☐	☐

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.

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. Direct Owners and Executive Officers. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required and cannot be more than one individual), director and any other 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 or executive officer 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%
   A - 5% but less than 10%
   B - 10% but less than 25%
   C - 25% but less than 50%
   D - 50% but less than 75%
   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 MM	Date Title or Status Acquired YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.

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. Indirect Owners. 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 MM	Date Status Acquired YYYY	Ownership Code	PR	*Control Person*	*CRD* No. If None:S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

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%
   A - 5% but less than 10%
   B - 10% but less than 25%
   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more
   G - Other (general partner, trustee, or elected member)

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 5**	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

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.
Check only one box: ☐ Add ☐ Delete ☐ Amend

Name _____ Jurisdictions _____

SECTION 1.F. Other Offices

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

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

_____ _____
(area code) (telephone number) (area code) (facsimile number)

SECTION 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

Check only one box: ☐ Add ☐ Delete

World Wide Web Site Address: _____

SECTION 1.K. Location of Books and Records

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)

If this address is a private residence, check this box: ☐

_____ _____
(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 5**	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*

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.

Check only one box: ☐ Add ☐ Delete

English Name of *Foreign Financial Regulatory Authority* _____
Name of Country _____

SECTION 2.A(7) Affiliated Adviser

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

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

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 5**	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(11) SEC Exemptive *Order*

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

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.

Name of Acquired Firm _____

Acquired Firm's SEC File No. (if any) 801-_____ Acquired Firm's *CRD* Number (if any) _____

SECTION 5.I(2) *Wrap Fee Programs*

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.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of *Wrap Fee Program* _____

Name of *Sponsor* _____

SECTION 6.B. Description of Primary Business

Describe your primary business (not your investment advisory business): _____

SECTION 7.A. Affiliated Investment Advisers and Broker-Dealers

You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Legal Name of Affiliate: _____

Primary Business Name of Affiliate: _____

Affiliated is (check only one box): ☐ Investment Adviser ☐ Broker-Dealer ☐ Dual (Investment Adviser and Broker-Dealer)

Affiliated Adviser's SEC File Number (if any) 801- _____ Affiliate's *CRD* Number (if any): _____

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 or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner, each limited liability company for which you or a *related person* is a manager, and each other private fund that you advise.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of Limited Partnership, Limited Liability Company, or other Private Fund: _____

Name of General Partner or Manager: _____

If you are registered or registering with the SEC, is this a "private fund" as defined under SEC rule 203(b)(3)-1? ☐ Yes ☐ No

Are your *clients* solicited to invest in the limited partnership, limited liability company, or other private fund? ☐ Yes ☐ No

Approximately what percentage of your *clients* have invested in this limited partnership, limited liability company, or other private fund?_____%

Minimum investment commitment required of a limited partner, member, or other investor: $_____

Current value of the total assets of the limited partnership, limited liability company, or other private fund: $_____

SECTION 10 *Control Persons*

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.

Check only one box: ☐ Add ☐ Delete ☐ Amend

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)

If this address is a private residence, check this box: ☐

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)

If this address is a private residence, check this box: ☐

Briefly describe the nature of the *control*: _____

FORM ADV Schedule D **Page 5 of 5**	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Use this Schedule D Page 5 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 5.

Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

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 Registered:	☐a firm ☐an individual ☐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: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

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

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: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, 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.

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)

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)
☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Vacated
☐ Withdrawn
☐ Other _____

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 Registered: ☐ a firm ☐ an individual ☐ 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: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or advisory affiliate's favor.

If you are registered or registering with a *state securities authority*, 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.

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)

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).

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	July 31, 2008
Estimated average burden hours per response.	9.402

FORM ADV

Part II - Page 1

Uniform Application for Investment Adviser Registration

Name of Investment Adviser:						
Address:	(Number and Street)	(City)	(State)	(Zip Code)	Area Code: ( )	Telephone number:

This part of Form ADV gives information about the investment adviser and its business for the use of clients. The information has not been approved or verified by any governmental authority.

Table of Contents

(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

1. A. Advisory Services and Fees. (check the applicable boxes)

For each type of service provided, state the approximate % of total advisory billings from that service. (See instruction below.)

Applicant:

☐	(1)	Provides investment supervisory services	_____ %
☐	(2)	Manages investment advisory accounts not involving investment supervisory services	_____ %
☐	(3)	Furnishes investment advice through consultations not included in either service described above	_____ %
☐	(4)	Issues periodicals about securities by subscription	_____ %
☐	(5)	Issues special reports about securities not included in any service described above	_____ %
☐	(6)	Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities	_____ %
☐	(7)	On more than an occasional basis, furnishes advice to clients on matters not involving securities	_____ %
☐	(8)	Provides a timing service	_____ %
☐	(9)	Furnishes advice about securities in any manner not described above	_____ %

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates.)

B. Does applicant call any of the services it checked above financial planning or some similar term? ..... Yes ☐ No ☐

C. Applicant offers investment advisory services for: (check all that apply)

☐	(1)	A percentage of assets under management	☐	(4)	Subscription fees
☐	(2)	Hourly charges	☐	(5)	Commissions
☐	(3)	Fixed fees (not including subscription fees)	☐	(6)	Other

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

2. Types of clients - Applicant generally provides investment advice to: (check those that apply)

☐	A.	Individuals	☐	E.	Trusts, estates, or charitable organizations
☐	B.	Banks or thrift institutions	☐	F.	Corporations or business entities other than those listed above
☐	C.	Investment companies	☐	G.	Other (describe on Schedule F)
☐	D.	Pension and profit sharing plans			

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

3. Types of Investments. Applicant offers advice on the following: (check those that apply)

- ☐ A. Equity securities
  - ☐ (1) exchange-listed securities
  - ☐ (2) securities traded over-the-counter
  - ☐ (3) foreign issuers
- ☐ B. Warrants
- ☐ C. Corporate debt securities (other than commercial paper)
- ☐ D. Commercial paper
- ☐ E. Certificates of deposit
- ☐ F. Municipal securities
- ☐ G. Investment company securities:
  - ☐ (1) variable life insurance
  - ☐ (2) variable annuities
  - ☐ (3) mutual fund shares
- ☐ H. United States government securities
- ☐ I. Options contracts on:
  - ☐ (1) securities
  - ☐ (2) commodities
- ☐ J. Futures contracts on:
  - ☐ (1) tangibles
  - ☐ (2) intangibles
- ☐ K. Interests in partnerships investing in:
  - ☐ (1) real estate
  - ☐ (2) oil and gas interests
  - ☐ (3) other (explain on Schedule F)
- ☐ L. Other (explain on Schedule F)

4. Methods of Analysis, Sources of Information, and Investment Strategies.

A. Applicant's security analysis methods include: (check those that apply)

- (1) ☐ Charting
- (2) ☐ Fundamental
- (3) ☐ Technical
- (4) ☐ Cyclical
- (5) ☐ Other (explain on Schedule F)

B. The main sources of information applicant uses include: (check those that apply)

- (1) ☐ Financial newspapers and magazines
- (2) ☐ Inspections of corporate activities
- (3) ☐ Research materials prepared by others
- (4) ☐ Corporate rating services
- (5) ☐ Timing services
- (6) ☐ Annual reports, prospectuses, filings with the Securities and Exchange Commission
- (7) ☐ Company press releases
- (8) ☐ Other (explain on Schedule F)

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

- (1) ☐ Long term purchases (securities held at least a year)
- (2) ☐ Short term purchases (securities sold within a year)
- (3) ☐ Trading (securities sold within 30 days)
- (4) ☐ Short sales
- (5) ☐ Margin transactions
- (6) ☐ Option writing, including covered options, uncovered options or spreading strategies
- (7) ☐ Other (explain on Schedule F)

Applicant:	SEC File Number: 801-	Date:

5. Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients? ..... Yes ☐ No ☐

(If yes, describe these standards on Schedule F.)

6. Education and Business Background.

For:

- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name
- year of birth
- formal education after high school
- business background for the preceding five years

7. Other Business Activities. (check those that apply)

☐ A. Applicant is actively engaged in a business other than giving investment advice.

☐ B. Applicant sells products or services other than investment advice to clients.

☐ C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F.)

8. Other Financial Industry Activities or Affiliations. (check those that apply)

☐ A. Applicant is registered (or has an application pending) as a securities broker-dealer.

☐ B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.

C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:

☐ (1) broker-dealer	☐ (7) accounting firm
☐ (2) investment company	☐ (8) law firm
☐ (3) other investment adviser	☐ (9) insurance company or agency
☐ (4) financial planning firm	☐ (10) pension consultant
☐ (5) commodity pool operator, commodity trading adviser or futures commission merchant	☐ (11) real estate broker or dealer
☐ (6) banking or thrift institution	☐ (12) entity that creates or packages limited partnerships

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest?. . Yes ☐ No ☐

(If yes, describe on Schedule F the partnerships and what they invest in.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

9. Participation or Interest in Client Transactions.

Applicant or a related person: (check those that apply)

☐ A. As principal, buys securities for itself from or sells securities it owns to any client.

☐ B. As broker or agent effects securities transactions for compensation for any client.

☐ C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.

☐ D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.

☐ E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

Describe, on Schedule F, your code of ethics, and state that you will provide a copy of your code of ethics to any client or prospective client upon request.

10. Conditions for Managing Accounts. Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services *and* impose a minimum dollar value of assets or other conditions for starting or maintaining an account?

Yes	No
☐	☐

(If yes, describe on Schedule F)

11. Review of Accounts. If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. **For reviews**, include their frequency, different levels, and triggering factors. **For reviewers**, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

B. Describe below the nature and frequency of regular reports to clients on their accounts.

12. Investment or Brokerage Discretion.

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

	Yes	No
(1) securities to be bought or sold?	☐	☐
(2) amount of the securities to be bought or sold?	☐	☐
(3) broker or dealer to be used?	☐	☐
(4) commission rates paid?	☐	☐

B. Does applicant or a related person suggest brokers to clients? Yes ☐ No ☐

For each yes answer to A describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it; and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for product and research services received.

13. Additional Compensation.

Does the applicant or a related person have any arrangements, oral or in writing, where it:

	Yes	No
A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients?	☐	☐
B. directly or indirectly compensates any person for client referrals?	☐	☐

(For each yes, describe the arrangements on Schedule F.)

14. Balance Sheet. Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities (unless applicant is registered or registering only with the Securities and Exchange Commission); or
- requires prepayment of more than $500 in fees per client and 6 or more months in advance

Has applicant provided a Schedule G balance sheet? Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of Form ADV Continuation Sheet for Form ADV Part II	Applicant:	SEC File Number: 801-	Date:

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule G of Form ADV Balance Sheet	Applicant:	SEC File Number: 801-	Date:

(Answers in Response to Form ADV Part II Item 14.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Instructions

1. The balance sheet must be:

   A. Prepared in accordance with generally accepted accounting principles

   B. Audited by an independent public accountant

   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

2. Securities included at cost should show their market or fair value parenthetically.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et. seq.).

4. Sole proprietor investment advisers:

   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities

   B. May aggregate other business and personal asset and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule H of Form ADV Page 1	Applicant:	SEC File Number: 801-	Date:

(for sponsors of wrap fee programs)

Name of wrap fee program or programs described in attached brochure:

1. ***Applicability of Schedule.*** This Schedule must be completed by applicants that are 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 ("sponsors"). A wrap fee program is any 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 execution of client transactions.

2. ***Use of Schedule.*** This Schedule sets forth the information the sponsor must include in the wrap fee brochure it is required to deliver or offer to deliver to clients and prospective clients of its wrap fee programs under Rule 204-3 under the federal Advisers Act and similar rules of jurisdictions. The wrap fee brochure prepared in response to this Schedule must be filed with the Commission and the jurisdictions as part of Form ADV by completing the identifying information on this Schedule and attaching the brochure. Brochures should be prepared separately, not on copies of this Schedule. Any wrap fee brochure filed with the Commission as part of an amendment to Form ADV shall contain in the upper right corner of the cover page the sponsors' registration number (801-).

3. ***General Contents of Brochure.*** Unlike Parts I and II of this form, this Schedule is not organized in "check-the-box" format. These instructions, including the requests for information in Item 7 below, should not be repeated in the brochure. Rather, this Schedule describes minimum disclosures that must be made in the brochure to satisfy the sponsor's duty to disclose all material facts about the sponsor and its wrap fee programs. **Nothing in this Schedule relieves the sponsor from any obligation under any provision of the federal Advisers Act or rules thereunder, or other federal or state law to disclose information to its advisory clients or prospective advisory clients not specifically required by this Schedule.**

4. ***Multiple Sponsors.*** If two or more persons fall within the definition of "sponsor" in Item 1 above for a single wrap fee program, only one such sponsor need complete the Schedule. The sponsors may choose among themselves the sponsor that will complete the Schedule.

5. ***Omission of Inapplicable Information.*** Any information not specifically required by this Schedule that is included in the brochure should be applicable to clients and prospective clients of the sponsor's wrap fee programs. If the sponsor is required to complete this Schedule with respect to more than one wrap fee program, the sponsor may omit from the brochure furnished to clients and prospective clients of any wrap fee program or programs information required by this Schedule that is not applicable to clients or prospective clients of that wrap fee program or programs. If a sponsor of more than one wrap fee program prepares separate wrap fee brochures for clients of different programs, each brochure must be filed with the Commission and the jurisdictions attached to a separate copy of this Schedule. Each such brochure must state that the sponsor sponsors other wrap fee programs and state how brochures for those programs may be obtained.

6. ***Updating.*** Sponsors are required to file an amendment to the brochure promptly after any information in the brochure becomes materially inaccurate. Amendments may be made by use of a "sticker", *i.e.*, a supplement affixed to the brochure that indicates what information is being added or updated and states the new or revised information, as long as the resulting brochure is readable. Stickers should be dated and should be incorporated into the text of the brochure when the brochure itself is revised.

7. ***Contents of Brochure.*** Include in the brochure prepared in response to this Schedule:

   (a) on the cover page, the sponsor's name, address, telephone number, and the following legend in bold type or some other prominent fashion:

   This brochure provides clients with information about [name of sponsor] and the [name of program or programs] that should be considered before becoming a client of the [name of program or programs]. This information has not been approved or verified by any governmental authority.

   (b) a table of contents reflecting the subject headings in the sponsor's brochure.

   (c) the amount of the wrap fee charged for each program or, if fees vary according to a schedule established by the sponsor, a table setting forth the fee schedule, whether such fees are negotiable, the portion of the total fee (or the range of such amounts) paid to persons providing advice to clients regarding the purchase or sale of specific securities under the program ("portfolio managers"), and the services provided under each program (including the types of portfolio management services);

(d) a statement that the program may cost the client more or less than purchasing such services separately and a statement of the factors that bear upon the relative cost of the program (*e.g.*, the cost of the services if provided separately and the trading activity in the client's account);

(e) if applicable, a statement that the person recommending the program to the client receives compensation as a result of the client's participation in the program, that the amount of this compensation may be more than what the person would receive if the client participated in other programs of the sponsor or paid separately for investment advice, brokerage, and other services, and that the person may therefore have a financial incentive to recommend the wrap fee program over other programs or services;

(f) a description of the nature of any fees that the client may pay in addition to the wrap fee and the circumstances under which these fees may be paid (including, if applicable, mutual fund expenses and mark-ups, mark-downs, or spreads paid to market makers from whom securities were obtained by the wrap fee broker);

(g) how the program's portfolio managers are selected and reviewed, the basis upon which portfolio managers are recommended or chosen for particular clients, and the circumstances under which the sponsor will replace or recommend the replacement of the portfolio manager;

(h) (1) if applicable, a statement to the effect that portfolio manager performance information is not reviewed by the sponsor or a third party and/or that performance information is not calculated on a uniform and consistent basis,

(2) if performance information is reviewed to determine its accuracy, the name of the party who reviews the information and a brief description of the nature of the review,

(3) a reference to any standards (*i.e.*, industry standards or standards usely solely by the sponsor) under which performance information may be calculated;

(i) a description of the information about the client that is communicated by the sponsor to the client's portfolio manager, and how often or under what circumstances the sponsor provides updated information about the client to the portfolio manager;

(j) any restrictions on the ability of clients to contact and consult with portfolio managers;

(k) in narrative text, the information required by Items 7 and 8 of Part II of this form and, as applicable to clients of the wrap fee program, the information required by Items 2, 5, 6, 9A and C, 10, 11, 13 and 14 of Part II;

(l) if any practice or relationship disclosed in response to Item 7, 8, 9A, 9C and 13 of Part II presents a conflict between the interests of the sponsor and those of its clients, explain the nature of any such conflict of interest; and

(m) if the sponsor or its divisions or employees covered under the same investment adviser registration as the sponsor act as portfolio managers for a wrap fee program described in the brochure, a brief, general description of the investments and investment strategies utilized by those portfolio managers.

8. ***Organization and Cross References.*** Except for the cover page requirements in Item 7(a) above, information contained in the brochure need not follow the order of the items listed in Item 7. However, the brochure should not be organized in such a manner that important information called by the form is obscured.

Set forth below the page(s) of the brochure on which the various disclosures required by Item 7 are provided.

		Page(s)			*Page(s)*			*Page(s)*
Item	7(a)	cover	Item	7(f)		Item	7(j)	
	#7(b)			#7(g)			#7(k)	
	#7(c)			#7(h)			#7(l)	
	#7(d)			#7(i)			#7(m)	
	#7(e)							

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: _____ Date: _____

Printed Name: _____ Title: _____

Adviser *CRD* Number: _____

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 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: _____ Date: _____

Printed Name: _____ Title: _____

Adviser *CRD* Number: _____

Form ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

NON-RESIDENT INVESTMENT ADVISER EXECUTION	PAGE 1

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: _____ Date: _____

Printed Name: _____ Title: _____

Adviser *CRD* Number: _____

EXHIBIT D

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	October 31,2013
Estimated average burden hours per response.....	10.60

FORM ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 2: Uniform Requirements for the Investment Adviser *Brochure* and *Brochure 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 information about your firm. You also may be required to deliver a *brochure supplement* disclosing information about one or more of your *supervised persons*. Part 2 of Form ADV sets out the minimum required disclosure 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.

Read all the instructions, including General Instructions for Form ADV, General Instructions for Part 2 of Form ADV, Instructions for Part 2A of Form ADV, Instructions for Part 2B of Form ADV, and (if you are preparing or updating a *wrap fee program brochure*) Instructions for Part 2A Appendix 1 of Form ADV, before preparing or updating your *brochure* or *brochure supplements*.

1. Narrative Format. Part 2 of Form ADV consists of a series of items that contain disclosure requirements for your firm's *brochure* and any required supplements. The items require narrative responses. You must respond to each item in Part 2. You must include the heading for each item provided by Part 2 immediately preceding your response to that item and provide responses in the same order as the items appear in Part 2. If an item does not apply to your business, you must indicate that item is not applicable. If you have provided information in response to one item that is also responsive to another item, you may cross-reference that information in response to the other item.

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: (i) use short sentences; (ii) use definite, concrete, everyday words; (iii) use active voice; (iv) use tables or bullet lists for complex material, whenever possible; (v) avoid legal jargon or highly technical business terms unless you explain them or you believe that your *clients* will understand them; and (vi) avoid multiple negatives. Consider providing examples to illustrate a description of your practices or policies. The brochure should discuss only conflicts the adviser has or is reasonably likely to have, and practices in which it engages or is reasonably likely to engage. If a conflict arises or the adviser decides to engage in a practice that it has not disclosed, supplemental disclosure must be provided to clients to obtain their consent. If you have a conflict or engage in a practice with respect to some (but not all) types or classes of clients, advice, or transactions, indicate as such rather than disclosing that you "may" have the conflict or engage in the practice.

   Note: The SEC's Office of Investor Education and Advocacy has published A Plain English Handbook. You may find the handbook helpful in writing your *brochure* and supplements. For a copy of this handbook, visit the SEC's web site at<www.sec.gov/news/extra/handbook.htm> or call 1-800-732-0330.

3. Disclosure Obligations as a Fiduciary. Under federal and state law, you are a fiduciary and must make full disclosure to your *clients* of all material facts relating to the advisory relationship. As a fiduciary, you also must seek to avoid conflicts of interest with your clients, and, at a minimum, make full disclosure of all material conflicts of interest between you and your *clients* that could affect the advisory relationship. This obligation

requires that you provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest you have and the business practices in which you engage, and can give informed consent to such conflicts or practices or reject them. To satisfy this obligation, you therefore may have to disclose to *clients* information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require. You may disclose this additional information to *clients* in your *brochure* or by some other means.

4. Full and Truthful Disclosure. All information in your *brochure* and *brochure supplements* must be true and may not omit any material facts.

5. Filing. You must file your *brochure(s)* (and amendments) through the IARD system using the text-searchable Adobe Portable Document Format ("PDF"). See SEC rules 203-1 and 204-1 and similar state rules. If you are registered or are registering with the SEC, you are not required to file your *brochure supplements* through the IARD or otherwise. You must, however, preserve a copy of the supplements and make them available to SEC staff upon request. See SEC rule 204-2(a)(14). If you are registered or are registering with one or more *state securities authorities*, you must file a copy of the *brochure supplement* for each *supervised person* doing business in that state.

Instructions for Part 2A of Form ADV: Preparing Your Firm *Brochure*

1. To whom must we deliver a firm *brochure*? You must give a firm *brochure* to each *client*. You must deliver the *brochure* even if your advisory agreement with the *client* is oral. See SEC rule 204-3(b) and similar state rules.

   If you are registered with the SEC, you are not required to deliver your *brochure* to either (i) *clients* who receive only *impersonal investment advice* from you and who will pay you less than $500 per year or (ii) *clients* that are SEC-registered investment companies or business development companies (the *client* must be registered under the Investment Company Act of 1940 or be a business development company as defined in that Act, and the advisory contract must meet the 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*, as a fiduciary you may still be required to provide your *clients* with similar information, particularly material information about your conflicts of interest and about your disciplinary information. If you are not required to give a *client* a *brochure*, you may make any required disclosures to that *client* by delivery of your *brochure* or through some other means.

2. When must we deliver a *brochure* to *clients*?

   - You must give a firm *brochure* to each *client* before or at the time you enter into an advisory agreement with that *client*. See SEC rule 204-3(b) and similar state rules.

   - Each year you must (i) deliver, within 120 days of the end of your fiscal year, to each *client* a free updated *brochure* that either includes a summary of material changes or is accompanied by a summary of material changes, or (ii) deliver to each *client* a summary of material changes that includes an offer to provide a copy of the updated *brochure* and information on how a *client* may obtain the *brochure*. See SEC rule 204-3(b) and similar state rules.

   - You do not have to deliver an interim amendment to *clients* unless the amendment includes information in response to Item 9 of Part 2A (disciplinary information). An interim amendment can be in the form of a document describing the material facts relating to the amended disciplinary event. See SEC rule 204-3(b) and similar state rules.

   Note: As a fiduciary, you have an ongoing obligation to inform your *clients* of any material information that could affect the advisory relationship. As a result, between *annual updating amendments* you must disclose material changes to such information to *clients* even if those changes do not trigger delivery of an interim amendment. See General Instructions for Part 2 of Form ADV, Instruction 3.

3. May we deliver our *brochure* electronically? Yes. The SEC has published interpretive guidance on delivering documents electronically, which you can find at <www.sec.gov/rules/concept/33-7288.txt>.

4. When must we update our *brochure*? You must update your *brochure*: (i) each year at the time you file your *annual updating amendment*; and (ii) promptly whenever any information in the *brochure* becomes materially inaccurate. You are not required to update your *brochure* between annual amendments solely because the amount of *client* assets you manage has changed or because your fee schedule has changed. However, if you are updating your *brochure* for a separate reason in between annual amendments, and the amount of *client* assets you manage listed in response to Item 4.E or your fee schedule listed in response to Item 5.A has become materially inaccurate, you should update that item(s) as part of the interim amendment. All updates to your *brochure* must be filed through the IARD system and maintained in your files. See SEC rules 204-1 and 204-2(a)(14) and similar state rules.

5. We are filing our *annual updating amendment*. The last *brochure*(s) that we filed does not contain any materially inaccurate information. Do we have to prepare a summary of material changes? No, as long as you

have not filed any interim amendments making material changes to the *brochure* that you filed with last year's *annual updating amendment*. If you do not have to prepare a summary of material changes, you do not have to deliver a summary of material changes or a *brochure* to your existing *clients* that year. See SEC rule 204-3(b). If you are a state-registered adviser, you should contact the appropriate *state securities authorities* to determine whether you must make an annual offer of the brochure.

6. Do we need to include the summary of material changes that we prepare in response to Item 2 with *our annual updating amendment* filing on IARD? Yes, you need to include the summary in your *annual updating amendment*. Item 2 permits you to include the summary as part of the *brochure* (on the cover page or the page immediately following the cover page) or to create a separate document containing the summary. If you include the summary as part of your *brochure*, the summary will be part of the *annual updating amendment* filing that you submit on IARD. If your summary of material changes is a separate document, you must attach the summary as an exhibit to your *brochure* and upload your *brochure* and the summary together in a single, text-searchable file in Adobe Portable Document Format on IARD for your *annual updating amendment*.

   Note: If you include the summary of material changes in your *brochure*, and you revise or update your *brochure* between *annual updating amendments*, you should consider whether you should update the summary as part of that other-than annual amendment to avoid confusing or misleading *clients* reading the updated *brochure*.

7. We have determined that we have no *clients* to whom we must deliver a *brochure*. Must we prepare one? No, but see note to Instruction 1 above.

8. May we include a summary of the *brochure* at the beginning of our *brochure*? Yes. Although it is not required, you may choose to include a summary of the *brochure* at the beginning of your *brochure*. Such summary, however, may not substitute for the summary of material changes required by Item 2 of Part 2A.

9. 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* sent to your *clients* who invest only in the United States can omit information about your advisory services and fees relating to offshore investments. See SEC rule 204-3(e) and similar state rules. If you prepare separate *brochures* you must file each *brochure* (and any amendments) through the IARD system as required in SEC rules 203-1 and 204-1 and similar state rules.

10. We *sponsor* a *wrap fee program*. Is there a different *brochure* that we need to deliver to our wrap fee *clients*? Yes. If you *sponsor* a *wrap fee program*, you must deliver a *wrap fee program brochure* to your wrap fee *clients*. The disclosure requirements for preparing a *wrap fee program 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 fee program brochure(s)*. See SEC rule 204-3(d) and similar state rules.

11. We provide portfolio management services to *clients* in *wrap fee programs* that we do not *sponsor*. Which *brochure* must we deliver to these *clients*? You must deliver your *brochure* prepared in accordance with Part 2A (not Appendix 1) to your wrap fee *clients*. You also must deliver to these *clients* any *brochure supplements* required by Part 2B of Form ADV.

12. 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.

13. Item 18 requires us to give our *clients* an audited balance sheet. May any public accountant perform the audit? Your auditor must be independent. Article 2 of SEC Regulation S-X sets out the general rules for auditor

independence. Please note that these requirements may be different from the rules of professional organizations.

14. 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 practices, policies and procedures you propose to adopt.

15. 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, contact information, website address (if you have one), 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 on the cover page of your *brochure* the following statement or other clear and concise language conveying the same information, and identifying the document as a "brochure":

This brochure provides information about the qualifications and business practices of [your name]. If you have any questions about the contents of this brochure, please contact us at [telephone number and/or email address]. 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] also is available on the SEC's website at www.adviserinfo.sec.gov.

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 you are amending your *brochure* for your annual update and it contains material changes from your last annual update, identify and discuss those changes on the cover page of the *brochure* or on the page immediately following the cover page, or as a separate document accompanying the *brochure*. You must state clearly that you are discussing only material changes since the last annual update of your *brochure*, and you must provide the date of the last annual update of your *brochure*.

Note: You do not have to separately provide this information 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. Your *brochure* must follow the same order, and contain the same headings, as the items listed in Part 2A.

Item 4 Advisory Business

A. Describe your advisory firm, including how long you have been in business. Identify your principal owner(s).

Notes: (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 Part 1A 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 an SEC-registered adviser, you

must identify intermediate subsidiaries that are publicly held, but not other intermediate subsidiaries. If you are a state-registered adviser, you must identify all 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, quantitative analysis, or market timing, explain the nature of that service in greater detail. If you provide investment advice only with respect to limited types of investments, explain the type of investment advice you offer, and disclose that your advice is limited to those types of investments.

C. Explain whether (and, if so, 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 participate in *wrap fee programs* by providing portfolio management services, (1) describe the differences, if any, between how you manage wrap fee accounts and how you manage other accounts, and (2) explain that you receive a portion of the wrap fee for your services.

E. If you manage *client* assets, disclose the amount of *client* assets you manage on a *discretionary basis* and the amount of *client* assets you manage on a non-*discretionary basis*. Disclose the date "as of" which you calculated the amounts.

Note: Your method for computing the amount of "*client* assets you manage" can be different from the method for computing "assets under management" required for Item 5.F in Part 1A. However, if you choose to use a different method to compute "*client* assets you manage," you must keep documentation describing the method you use. The amount you disclose may be rounded to the nearest $100,000. Your "as of" date must not be more than 90 days before the date you last updated your *brochure* in response to this Item 4.E.

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.

Note: If you are an SEC-registered adviser, you do not need to include this information in a *brochure* that is delivered only to qualified purchasers as defined in section 2(a)(51)(A) of the Investment Company Act of 1940.

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 that *clients* will incur brokerage and other transaction costs, and direct *clients* to the section(s) of your *brochure* that discuss 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 a 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 any of your *supervised persons* accepts compensation for the sale of securities or other investment products, including asset-based sales charges or service 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 your *supervised persons* an incentive to recommend investment products based on the compensation received, rather than on a *client's* needs. Describe generally how you address conflicts that arise, including your procedures for

disclosing the conflicts to *clients*. If you primarily recommend 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 asset-based distribution 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 or markups, disclose whether you reduce your advisory fees to offset the commissions or markups.

Note: If you receive compensation 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 and any applicable state securities statutes.

Item 6 *Performance-Based Fees* and Side-By-Side Management

If you or any of your *supervised persons* accepts *performance-based fees* – that is, fees based on a share of capital gains on or capital appreciation of the assets of a *client* (such as a *client* that is a hedge fund or other pooled investment vehicle) – disclose this fact. If you or any of your *supervised persons* manage both accounts that are charged a *performance-based fee* and accounts that are charged another type of fee, such as an hourly or flat fee or an asset-based fee, disclose this fact. Explain the conflicts of interest that you or your *supervised persons* face by managing these accounts at the same time, including that you or your *supervised persons* have an incentive to favor accounts for which you or your *supervised persons* receive a *performance-based fee*, and describe generally how you address these conflicts.

Item 7 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 for opening or maintaining an account, such as a minimum account size, disclose the requirements.

Item 8 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. For each significant investment strategy or method of analysis you use, explain the material 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 material risks involved. If the type of security involves significant or unusual risks, discuss these risks in detail.

Item 9 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 or the integrity of your management, disclose all material facts regarding those events.

Items 9.A, 9.B, and 9.C list specific legal and disciplinary events presumed to be 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) you have rebutted the presumption of materiality to determine that the event is not material (see Note below). For purposes of calculating this ten-year period, the "date" of an event is the date that the final *order*, judgment, or decree was entered, or the date that any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 9.A, 9.B, and 9.C do not contain an exclusive list of material disciplinary events. If your advisory firm or a *management person* has been *involved* in a legal or disciplinary event that is not listed in Items 9.A, 9.B, or 9.C, but nonetheless 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 material to a *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, perjury, 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: (i) barred or suspended from membership or from association with other members, or was expelled from membership; (ii) otherwise significantly limited from *investment-related* activities; or (iii) fined more than $2,500.

Note: You may, under certain circumstances, rebut the presumption that a disciplinary event is material. If an event is immaterial, you are not required to disclose it. When you review a legal or disciplinary event involving your firm or a *management person* to determine whether it is appropriate to rebut the presumption of 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 conclude that the materiality presumption has been overcome, you must prepare and maintain a file memorandum of your determination in your records. See SEC rule 204-2(a)(14)(iii).

Item 10 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, a commodity trading advisor, or an associated person of the foregoing entities, disclose this fact.

C. Describe any relationship or arrangement that is material to your advisory business or to your *clients* 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 how you address it.

1. broker-dealer, municipal securities dealer, or government securities dealer or broker
2. investment company or other pooled investment vehicle (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.

D. If you recommend or select other investment advisers for your *clients* and you receive compensation directly or indirectly from those advisers that creates a material conflict of interest, or if you have other business relationships with those advisers that create a material conflict of interest, describe these practices and discuss the material conflicts of interest these practices create and how you address them.

Item 11 Code of Ethics, Participation or Interest in *Client* Transactions and Personal Trading

A. If you are an SEC-registered adviser, briefly describe your code of ethics adopted pursuant to SEC rule 204A-1 or similar state rules. Explain that you will provide a copy of your code of ethics to any *client* or prospective *client* upon request.

B. 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, describe your practice and discuss the conflicts of interest it presents. Describe generally how you address conflicts that arise.

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 an investment adviser to an investment company that you recommend to *clients*.

C. 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*, describe your practice and discuss the conflicts of interest this presents and generally how you address the conflicts that arise in connection with personal trading.

D. 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 generally how you address conflicts that arise.

Note: The description required by Item 11.A may include information responsive to Item 11.B, C or D. If so, it is not necessary to make repeated disclosures of the same information. You do not have to provide disclosure in response to Item 11.B, 11.C, or 11.D with respect to securities that are not "reportable securities" under SEC rule 204A-1(e)(10) and similar state rules.

Item 12 Brokerage Practices

A. Describe the factors that you consider in selecting or recommending broker-dealers for *client* transactions and determining the reasonableness of their compensation (*e.g.*, commissions).

1. Research and Other Soft Dollar Benefits. If you receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions ("soft dollar benefits"), disclose your practices and discuss the conflicts of interest they create.

Note: Your disclosure and discussion must include all soft dollar benefits you receive, including, in the case of research, both proprietary research (created or developed by the broker-dealer) and research created or developed by a third party.

a. Explain that when you use *client* brokerage commissions (or markups or markdowns) to obtain research or other 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 or other products or services, rather than on your *clients'* interest in receiving most favorable execution.

c. If you may cause *clients* to pay commissions (or markups or markdowns) 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. Describe the types of products and services you or any of your *related persons* acquired with *client* brokerage commissions (or markups or markdowns) within your last fiscal year.

Note: This description must be specific enough for your *clients* to understand the types of products or services that you are acquiring and to permit them to evaluate possible conflicts of interest. Your description must be more detailed for products or services that do not qualify for the safe harbor in section 28(e) of the Securities Exchange Act of 1934, such as those services that do not aid in investment decision-making or trade execution. Merely disclosing that you obtain various research reports and products is not specific enough.

f. 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 you received.

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 most favorable execution.

b. Explain the 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 recommend, 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. Explain that by directing brokerage you may be unable to achieve most favorable execution of *client* transactions, and that this practice may cost *clients* more money.

b. If you permit a *client* to direct brokerage, describe your practice. If applicable, explain that you may be unable to achieve most favorable 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 aggregate orders to reduce transaction costs, or the *client* may receive less favorable prices.

Note: If your *clients* only have directed brokerage arrangements subject to most favorable execution of *client* transactions, you do not need to respond to the last sentence of Item 12.A.3.a. or to the second or third sentences of Item 12.A.3.b.

B. Discuss whether and under what conditions you aggregate the purchase or sale of securities for various *client* accounts. If you do not aggregate orders when you have the opportunity to do so, explain your practice and describe the costs to *clients* of not aggregating.

Item 13 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 *supervised persons* 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 14 *Client* Referrals and Other Compensation

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*, generally describe the arrangement, explain the conflicts of interest, and describe how you address the conflicts of interest. For purposes of this Item, economic benefits include any sales awards or other prizes.

B. If you or a *related person* directly or indirectly compensates any *person* who is not your *supervised person* for *client* referrals, describe the arrangement and the compensation.

Note: If you compensate any *person* for *client* referrals, you should consider whether SEC rule 206(4)-3 or similar state rules regarding solicitation arrangements and/or state rules requiring registration of *investment adviser representatives* apply.

Item 15 *Custody*

If you have *custody* of *client* funds or securities and a qualified custodian sends quarterly, or more frequent, account statements directly to your *clients*, explain that *clients* will receive account statements from the broker-dealer, bank or other qualified custodian and that *clients* should carefully review those statements. If your *clients* also receive account statements from you, your explanation must include a statement urging *clients* to compare the account statements they receive from the qualified custodian with those they receive from you.

Item 16 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 17 Voting *Client* Securities

A. If you have, or will accept, authority to vote *client* securities, briefly describe your voting policies and procedures, including those adopted pursuant to SEC rule 206(4)-6. Describe whether (and, if so, how) your *clients* can direct your vote in a particular solicitation. Describe how you address conflicts of interest between you and your *clients* with respect to voting their securities. Describe how *clients* may obtain information from you about how you voted their securities. Explain to *clients* that they may obtain a copy of your proxy voting policies and procedures upon request.

B. If you do not have authority to vote *client* securities, disclose this fact. Explain whether *clients* will receive their proxies or other solicitations 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 solicitation.

Item 18 Financial Information

A. If 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 of the independent public accountant and any accompanying independent public 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 have not completed your first fiscal year, include a balance sheet dated not more than 90 days prior to the date of your *brochure*.

Exception: You are not required to respond to Item 18.A of Part 2A if you also are: (i) a qualified custodian as defined in SEC rule 206(4)-2 or similar state rules; or (ii) an insurance company.

B. If 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 any financial condition that is reasonably likely to impair your ability to meet contractual commitments to *clients*.

Note: With respect to Items 18.A and 18.B, if you are registered or are registering with one or more of the *state securities authorities*, the dollar amount reporting threshold for including the required balance sheet and for making the required financial condition disclosures is more than $500 in fees per *client*, six months or more in advance.

C. If you have been the subject of a bankruptcy petition at any time during the past ten years, disclose this fact, the date the petition was first brought, and the current status.

If you are registering or are registered with one or more *state securities authorities*, you must respond to the following additional Item.

Item 19 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.

EXHIBIT E

Release No. 289 (S.E.C. Release No.), Release No. ID - 289, 2005 WL 1584978

S.E.C. Release No.
Initial Decision

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF BRANDT, KELLY & SIMMONS, LLC, AND KENNETH G. BRANDT

Administrative Proceeding File No. 3-11672
June 30, 2005

*1 BEFORE: Carol Fox Foelak, Administrative Law Judge.

APPEARANCES:
John S. Yun, Sahil W. Desai, and Michael S. Dicke for the Division of Enforcement, Securities and Exchange Commission.
Bradley J. Schram and Brian Witus of Hertz, Schram & Saretsky, P.C., for Respondents Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt.

INITIAL DECISION

SUMMARY

This Initial Decision dismisses charges brought against a registered investment adviser and its majority owner. The charges concerned Respondents' use of a $7,500 payment received from a broker-dealer to defray expenses incurred when their clients transferred to that broker-dealer from another.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings (OIP) on September 21, 2004. The proceeding was authorized pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act).

The undersigned held a two-day hearing on December 8 and 9, 2004, in Detroit, Michigan. Four witnesses, including Respondent Kenneth G. Brandt (Brandt) testified, and eighty-seven exhibits were admitted into evidence. [1]

The findings and conclusions in this Initial Decision are based on the record. Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following posthearing pleadings were considered: (1) the Division of Enforcement's (Division) January 28, 2005, Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief; (2) Respondents' March 7, 2005, Proposed Findings of Fact and Conclusions of Law; and (3) the Division's March 21, 2005, Reply. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns the use of a $7,500 payment to Brandt, Kelly & Simmons, LLC (BKS), a registered investment adviser, from TD Waterhouse Investor Services, Inc. (TDW), a broker-dealer that was custodian of BKS's client accounts and to

which BKS directed client trades. The OIP alleges that the $7,500 was intended as fee reimbursements for BKS clients but that, instead, BKS used the money to pay its own operating expenses. Thus, the OIP alleges, BKS and Brandt misappropriated client assets in violation of the antifraud provisions of the Advisers Act, Sections 206(1) and 206(2), and failed to disclose its receipt of the money in Part II, Item 13.A. of its Form ADV in violation of Section 207 of the Advisers Act. The OIP also alleges that Brandt violated and aided and abetted and caused BKS's violations of these provisions. The Division requests disgorgement of $5,000, a cease-and-desist order as to both Respondents, and a requirement that BKS hire a compliance consultant. Additionally, the Division requests second-tier civil penalties of $50,000 against BKS and $25,000 against Brandt and a sixty-day suspension against Brandt.

*2 Respondents argue that they reimbursed clients far more than $7,500 in fees and expenses that the clients incurred when Respondents transferred their business to TDW from their previous broker-dealer. They note that the payment was non-recurring and was not connected in any way to the volume of business BKS provided to TDW. They state that they had already decided to select TDW before the $7,500 payment was negotiated. Respondents request that the proceeding be dismissed. [2] In the alternative, if found liable, Respondents argue that no sanctions be imposed in that their actions were neither egregious, repeated, or involved scienter, and that there is no risk of future violations.

II. FINDINGS OF FACT

A. Respondents and Related Entities

Brandt has worked in the securities industry for more than thirty years. Tr. 25-26. He was a registered representative associated with Smith Barney and its predecessors from 1979 to 1996. Tr. 25-26. He was associated with Linsco Private Ledger (LPL), a broker-dealer and registered investment adviser, from 1996 to 2001. Tr. 26-29. In 2001, he and a colleague, Craig Simmons (Simmons), left LPL and established their own investment adviser, BKS. Tr. 34, 91-92, 232. At the time Brandt left LPL, about 90% of his clients were advisory clients and 10% were brokerage clients. Tr. 29-30, 49-50. Brandt currently is 85% owner of BKS. Tr. 84.

Brandt has never been fined or disciplined by the Commission, the NASD, or any other regulatory body. Tr. 90. This proceeding has had a devastating effect on him professionally and personally. Tr. 138-39.

Simmons was born in 1971 and has worked in the securities industry since 1993. Tr. 231-32. He was associated with LPL from 1996 to 2001, when he left to form BKS with Brandt. Tr. 232. He currently has a 9% ownership interest in BKS. Tr. 232. Simmons has never been the subject of a disciplinary action or customer complaint. Tr. 280-81.

BKS is a registered investment adviser; its registration with the Commission became effective and it opened for business in February 2001. Tr. 57. Eventually, about 90% of Brandt's and Simmons's accounts at LPL moved to BKS. Tr. 58. BKS received about $1 million in annual revenue in 2001, 2002, and 2003. Tr. 82-83. BKS had assets under management of about $135 million as of 2003. Tr. 83-84.

B. Brandt and Simmons Establish BKS

Brandt and Simmons decided to strike out on their own because they believed they could offer their clients better service at lower cost than at LPL. Tr. 33-34, 94, 100, 282-83, 288. They believed that at LPL their clients were paying for unneeded services. Tr. 33-34, 282-83. Additionally, LPL planned to become self-clearing, and, based on experience, Brandt and Simmons believed this would cause problems to their clients. Tr. 91-92, 283-84. Also, they believed that the technology that LPL made available to them was inferior to what they might obtain independently. Tr. 92, 282. They understood that they would do less well financially at first, but believed that they would profit in the long run by effecting substantial cost savings for their customers. [3] Tr. 93-94, 100, 288.

*3 BKS needed a custodian and broker-dealer for their clients' brokerage accounts. Tr. 41. Brandt and Simmons considered Schwab, Fidelity, TDW, and others. Tr. 41-42, 236, 284-85. They sought the lowest possible transaction fees and pricing structure for their clients. Tr. 213-14. Eventually they settled on TDW because it offered the lowest fees, technology that met their needs, and good service. [4] Tr. 101-02, 183, 235-36, 285-86. The cost savings to customers included lower or no transaction fees, no annual maintenance fee, and significantly lower 12b-1 fees [5] in the same mutual funds that clients were already holding. Tr. 97-100, 140-41. TDW and BKS estimated that the average account would save more than $500 per year by transferring to TDW. Tr. 98-99, 216, 310; Div. Ex. 5 at TD07553.

Brandt and Simmons hoped that their clients at LPL would follow them to BKS and discussed the benefits and costs of the move with each client. Tr. 56, 110-11, 247-48, 266-67. The costs that a client might incur in transitioning to TDW included IRA termination fees, [6] mutual fund Class B share contingent deferred sales charges (CDSC), [7] bounced check fees, transaction costs from selling stock to put assets under management with BKS - anything related to a customer's transfer from LPL to TDW. Tr. 105-07, 132-33. BKS reimbursed more than $20,000 to clients for their costs of transferring, by giving them credits against their quarterly management fees. [8] Tr. 66, 116-27, 137, 244-46, 298, 300; Resp. Exs. A1-26, D1-5, D7-12, D14-17, D19, D21-24, D27-31. Brandt did not give any fee credits to himself or family members. Tr. 112.

C. $7,500 Fee Reimbursement

After deciding to select TDW, Brandt and Simmons asked TDW for reimbursement of fees that would be incurred by clients transferring from LPL to TDW. [9] Tr. 43-46, 102-03. Brandt's ballpark estimate was that these would amount to about $30,000. Tr. 149, 297; Div. Ex. 14. Brandt and Simmons's principal contact at TDW was Sean Lindenbaum (Lindenbaum); they also had discussions with others, including Lindenbaum's supervisor, Mark Avers (Avers). Tr. 45, 184, 236-37. Eventually BKS and TDW settled on $7,500: on October 10, 2000, Lindenbaum telephoned and left a message for Brandt that TDW would "pay up to $7,500 in term. fees." Tr. 215; Div. Ex. 5 at TD07553. The agreement was memorialized in an October 17, 2000, letter from TDW to Brandt, which stated in reference to this subject, in totality, "TDW is willing to commit up to $7,500 toward account termination fees." [10] Div. Ex. 2 at BKS0020. The amount was not contingent on any particular amount of business or recommendation by TDW. Tr. 103.

The phrase "account termination fees" was not defined in the October 17, 2000, letter or elsewhere. Tr. 208; Div. Ex. 2. The Division argues that "account termination fees" meant, and was restricted to, the $50 fee charged by LPL for closing out IRA accounts. Yet, when TDW refers to IRA accounts, it normally specifies "IRA," because in the securities industry there is a fundamental difference between an IRA and a non-IRA account. Tr. 208-09. Brandt testified that he was never told by TDW and never had any understanding that the $7,500 was for IRA termination fees only, and that he believed that the $7,500 could be used for reimbursement of CDSCs and other charges incurred by clients. [11] Tr. 113, 125. Lindenbaum testified in the Division's direct case that he believed that the $7,500 was only for IRA account termination fees. Tr. 191-92. He testified that he does not remember discussing any fees with BKS other than IRA termination fees. [12] Tr. 196. He testified that entries in his TDW contact detail report referring to "term. fees" and "ind. acct. termination fees" actually referred to IRA termination fees. Tr. 193-94, 229; Div. Ex. 5 at TD07551, TD0553. However, his testimony on cross-examination was inconsistent with this: he testified that he discussed with Brandt and Simmons a wide variety of fees and charges that clients would incur in transferring to TDW. Tr. 223, 318. The undersigned has concluded that Lindenbaum's direct testimony was biased in favor of placing himself and his employer, TDW, in the best possible light with Commission staff. [13] Accordingly, it is found that Lindenbaum's discussions with BKS about fees and charges were not restricted to IRA termination fees and that TDW did not restrict the $7,500 to reimbursement of IRA termination fees only.

*4 TDW placed the $7,500 payment in BKS's sundry account at TDW in May 2001. [14] Tr. 60, 244-45; Div. Ex. 7A at 3. TDW annotated the entry in its records as "reimbursement of termination fees," with no mention of "IRA." Tr. 113; Div. Ex.

7A at 3. From there, the funds were wired to BKS's operating account at the Huntington National Bank. Tr. 60-61, 244. BKS did not segregate the $7,500. Tr. 65, 112. It had always expected to reimburse clients in excess of that amount. Tr. 267, 298.

D. BKS's Form ADV

Brandt and Simmons understood that they are ultimately responsible for compliance. [15] Tr. 48, 62, 233, 239. Lindenbaum and Avers referred Brandt and Simmons to several firms that would help them with their compliance obligations. Tr. 47-48, 183-86, 198, 238-39. BKS selected National Regulatory Services (NRS) in November 2000. [16] Tr. 158-60, 237; Div. Exs. 16, 18, 19. NRS undertook to provide full-service turnkey compliance services, including creating and updating BKS's compliance manual, preparation of Forms ADV, and other services. Tr. 128-29; Resp. Ex. C. BKS desired to be in full compliance with all requirements; it provided NRS with all the documentation and information that it requested and held nothing back so that NRS could prepare its Forms ADV with full disclosure. [17] Tr. 80-81, 130.

Forms ADV that BKS filed in February 2001, September 2002, and June 2003 listed, in response to Item 13.A. of Part II, in general terms, benefits that it might receive on an ongoing basis from TDW, but did not mention the $7,500 payment. Tr. 75-77; Div. Exs. 9B at 14-15, 10B at 33-34, 11B at BKS00272-73. The Forms ADV were reviewed and approved by Maria Seedner, TDW's compliance director, who had also reviewed the October 17, 2000, letter that contained the agreement to pay the $7,500. Tr. 205-07, 225-27; Div. Ex. 8 at 1. TDW never told BKS that it should disclose the $7,500 on its Form ADV. [18] Tr. 203, 210-11.

After the Commission began to investigate this matter BKS filed an amendment to Item 13.A. of Part II of its Form ADV that disclosed the $7,500. [19] Tr. 78-79, 162-64, 306; Div. Exs. 20-21.

III. CONCLUSIONS OF LAW

The record shows that BKS and Brandt worked diligently to establish a business plan that would save their clients a substantial amount of money. Did they, however, defraud them as well? It is concluded that the answer is "No" - BKS and Brandt did not violate the antifraud provisions.

A. Advisers Act Antifraud Provisions

BKS and Brandt are charged with willfully violating the antifraud provisions of the Advisers Act. Brandt is also charged with willfully aiding and abetting and causing BKS's violations. Sections 206(1) and 206(2) of the Advisers Act make it unlawful for any investment adviser, by jurisdictional means, to directly or indirectly:

1. employ any device, scheme, or artifice to defraud any client or prospective client, or

2. engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

***5** Section 207 of the Advisers Act makes it unlawful for "any person willfully to make" material misstatements and omissions in applications and reports filed with the Commission under the Advisers Act.

Scienter is required to establish violations of Section 206(1) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976); *see also Aaron v. SEC*, 446 U.S. 680, 686 n.5, 695-97 (1980); *SEC v. Steadman*, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. *See David Disner*, 52 S.E.C. 1217, 1222 & n.20 (1997); *see also SEC v. Steadman*, 967 F.2d at 641-42; *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is conduct which is "'highly unreasonable' and ... represents 'an extreme departure from the standards of ordinary care ... to

the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it."' *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Section 206(2) of the Advisers Act; a showing of negligence is adequate. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963); *see also SEC v. Steadman*, 967 F.2d at 643 & n.5; *Steadman v. SEC*, 603 F.2d 1126, 1132-34 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

Material misrepresentations and omissions violate Sections 206(1), 206(2), and 207 of the Advisers Act. The standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. *See SEC v. Steadman*, 967 F.2d at 643; *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231-32, 240 (1988); *TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Investment advisers are fiduciaries and have an affirmative duty of utmost good faith and full and fair disclosure of all material facts. *See Capital Gains Research Bureau, Inc.*, 375 U.S. at 191-92, 194, 201.

***6** BKS is accountable for the actions of its responsible officers, including Brandt. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977)). A company's scienter is imputed from that of the individuals controlling it. *See SEC v. Blinder, Robinson & Co.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). As an associated person of BKS, Brandt's conduct and scienter are also attributed to the firm. *See* Section 203(e) of the Advisers Act.

1. Aiding and Abetting; Causing

In addition to being charged with committing primary violations, Brandt is charged with "aiding and abetting," and with "causing," primary violations of Advisers Act Sections 206(1), 206(2), and 207 by BKS.

For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; also conceptualized as scienter in aiding and abetting antifraud violations; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000); *Woods v. Barnett Bank of Ft. Lauderdale*, 765 F.2d 1004, 1009 (11th Cir. 1985); *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980); *IIT v. Cornfeld*, 619 F.2d 909, 922 (2d Cir. 1980); *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 94-97 (5th Cir. 1975); *SEC v. Coffey*, 493 F.2d 1304, 1316-17 (6th Cir. 1974); *Russo Sec. Inc.*, 53 S.E.C. 271, 278 & n.16 (1997); *Donald T. Sheldon*, 51 S.E.C. 59, 66 (1992), *aff'd*, 45 F.3d 1515 (11th Cir. 1995); *William R. Carter*, 47 S.E.C. 471, 502-03 (1981). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. *See Sharon M. Graham*, 53 S.E.C. 1072, 1084 n.33 (1998), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. *See Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990); *Cornfeld*, 619 F.2d at 923, 925; *Rolf*, 570 F.2d at 47-48; *Woodward*, 522 F.2d at 97.

***7** For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his or her conduct would contribute to the violation. *Robert M. Fuller*, 80 SEC Docket 3539, 3545 (Aug. 25, 2003), *pet. denied*, No. 03-1334, 2004 U.S. App. Lexis 12893 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. *See Graham*, 53 S.E.C. at 1085 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *recon. denied*, 74 SEC Docket 1351 (Mar. 8, 2001), *pet. denied sub nom. KPMG, LLP*, 289 F.3d 109 (D.C. Cir. 2002). It is assumed that scienter is required to establish secondary liability for causing a primary violation that requires scienter. *Id.*

2. Willfulness

The Division requests sanctions pursuant to Sections 203(f), (i), and (k) of the Advisers Act. The Commission must find willful violations to impose sanctions under Sections 203(f) and (i) of the Advisers Act. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. *See Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *Steadman v. SEC*, 603 F.2d 1126, 1135 (5th Cir. 1979); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

B. Antifraud Violations

The OIP alleges that BKS and Brandt misappropriated $7,500 in client assets by using TDW's $7,500 payment to pay for operating expenses instead of passing on the $7,500 in fee reimbursements to clients and that they failed to inform the clients of the misappropriation, thus violating Sections 206(1) and 206(2) of the Advisers Act. Further, the OIP alleges that BKS and Brandt violated Section 207 of the Advisers Act by failing to disclose the $7,500 payment on Part II, Item 13.A. of its Form ADV.

1. Section 206

The record shows that BKS reimbursed clients for more than $20,000 - far more than $7,500 - for fees they incurred in transferring from LPL to TDW. Thus, there was no misappropriation of client assets and consequently no material misrepresentations or omissions concerning a misappropriation of client assets.[20]

***8** Brandt and Simmons disclosed to each client individually the benefits and costs of changing from LPL to TDW. The Division argues that BKS and Brandt violated Section 206 by offering a $50 reimbursement to IRA account holders who complained about the fee rather than offering $50 to all IRA account holders, whether they complained or not. The OIP does not, however, allege that BKS and Brandt distributed the $50 payments based on impermissible criteria. The OIP alleges that they *misappropriated* the $7,500.

The Division argues that reimbursement of CDSCs paid by clients was a marketing expense that should have been borne by BKS because the clients could have retained their B shares and not paid the CDSCs. However, by this logic, reimbursement of the IRA fees was also a marketing expense since the IRA account holders could have stayed at LPL and not paid the IRA fees.

Not only did BKS reimburse clients far more than $7,500, the record shows that BKS and Brandt worked diligently to secure a custodian that would save their clients a substantial amount of money compared to what they had been paying LPL. In sum, there was no scheme to defraud, no material misrepresentations or omissions, and no violation of Sections 206(1) or 206(2) of the Advisers Act.

2. Section 207

The OIP alleges that BKS and Brandt violated Section 207 of the Advisers Act because they failed to disclose receipt of the $7,500 on Item 13.A. of Part II of BKS's Forms ADV.[21] Item 13.A. of Part II of Form ADV is entitled "Additional Compensation." It asks, "Does applicant or a related person have any arrangements, oral or in writing, where it: is paid cash or receives some economic benefit (including commissions, research, or non-research services) from a non-client in connection with giving advice to clients?" The allegation that Section 207 was violated is based on the assumption that BKS misappropriated the $7,500 so that the funds were compensation to BKS. However, this assumption is inconsistent with the finding that BKS distributed more than $7,500 to clients. BKS was not obligated to disclose the $7,500 payment because it was not compensation to BKS and because BKS did not misappropriate it. The economic benefit of the $7,500 was conferred on clients, not BKS. Accordingly, BKS was not required to disclose the $7,500 payment in response to Item 13.A.[22]

Assuming, *arguendo*, that BKS was required to disclose the payment in response to Item 13.A., its failure to do so was mitigated by its subsequent amendment to disclose the payment when it learned that Commission staff considered that it should be disclosed. Further, considering the *Steadman* factors, no sanction is necessary in the public interest.[23] The putative violation was isolated and scienter is absent. BKS and Brandt even hired an independent compliance expert, NRS, to help them with their compliance responsibilities, including preparation of Forms ADV.[24] The record is clear that BKS and Brandt held no information or documents back from NRS and had no intention or motive to hold back documents concerning the $7,500. The record shows that Brandt sincerely desires to comply with all requirements applicable to investment advisers and considers himself ultimately responsible for BKS's compliance. While BKS and Brandt remain in the investment adviser business, the likelihood of future violations is essentially nonexistent.

IV. ULTIMATE CONCLUSIONS

***9** It is concluded that BKS and Brandt did not violate Sections 206(1), 206(2), or 207 of the Advisers Act. Further, Brandt did not willfully aid and abet or cause violations of Sections 206(1), 206(2), or 207 of the Advisers Act. Accordingly, the proceeding will be dismissed as to both Respondents.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on March 1, 2005.

VI. ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that this administrative proceeding IS DISMISSED as to Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge

Footnotes

1 Citations to the transcript will be noted as "Tr. __." The Division's exhibits will be noted as "Div. Ex. __," and Respondents', as "Resp. Ex. __."

2 Respondents also request an award of legal fees, costs, and expenses wrongfully incurred. This request, which is premature, can only be made under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, and Sections 201.31-.59 of the Commission's Rules, 17 C.F.R. §§ 201.31-.59. The EAJA and the cited Commission Rules specify the circumstances under which an award of fees and expenses will be made to a party.

3 At LPL, Brandt had annual commission income of about $300,000, and in addition, about $120,000 in trail commissions. Tr. 93. By comparison, his income from BKS was $300-$350 thousand in 2001 and 2002, less in 2003. Tr. 83.

4 Brandt satisfied himself that TDW would make a reasonable profit from BKS's business and thus would have an incentive to render good service. Tr. 102.

5 The 12b-1 fee is authorized by Rule 12b-1 under the Investment Company Act. *See* 17 C.F.R. § 270.12b-1. As adopted in 1980, the rule permits a fund to pay "distribution" expenses, including broker's commissions, and shareholder service expenses from fund assets. For a concise history of the rule, see William P. Dukes and James B. Wilcox, *The Difference Between Application and Interpretation of the Law as It Applies to SEC Rule 12b-1 Under the Investment Company Act of 1940*, 27 New Eng. L. Rev. 9 (1992).

6 LPL charged $50 to close an IRA account. Tr. 47. Many clients were not concerned about the $50 IRA fee, or other small fees, because their savings from transferring to TDW would be so great. Tr. 108-09, 111, 247-48. However, if a client complained about it, BKS offered to reimburse the $50. Tr. 154-55. About 50 of about 200 IRA accounts received the $50 reimbursement. Tr. 47, 67, 248-49. Brandt had originally estimated that he might reimburse as much as $15,000 for IRA fees. Tr. 46.

7 Some clients, who had not been managed clients at LPL, decided to move to BKS and become managed clients, but had Class B shares of mutual funds subject to a substantial CDSC on redemption. Tr. 109. They were offered reimbursement of the CDSC. Tr. 109, 153. The Class B shares theoretically could have been transferred to TDW instead of being redeemed. However, to do so would have been irrational given that the client could transfer to a class of shares that required no sales load and charged lower 12b-1 fees than B shares. At TDW, BKS obtained access to fund classes with no load or load waived and with significantly lower 12b-1 fees than clients were paying in the same funds. Tr. 97-99, 139-41.

8 The actual amount reimbursed was greater than the amount reflected in Resp. Exs. A1-26, D1-5, D7-12, D14-17, D19, D21-24, D27-31. Those exhibits reflect credits that exceeded an account's quarterly fee and were carried over to the next quarter. If the credit was less than the quarterly fee and did not have to be carried over to the next quarter, there was no separate tracking of the reimbursements. Tr. 66, 116, 133, 251-52, 303-04.

9 Schwab and Fidelity also were willing to consider reimbursement of transition costs. Tr. 102-03.

10 Avers provided this language to Lindenbaum, who drafted the letter. Tr. 203-05. TDW's compliance officer, Maria Seedner, reviewed and approved the letter. Tr. 205-07. BKS did not draft any of the language in the letter. Tr. 207.

11 The Division complains that, during the investigation that preceded this proceeding, Respondents did not argue that they had reimbursed charges in addition to IRA fees. However, the Division had notice of Respondents' defense from their prehearing brief.

12 Lindenbaum, the only witness from TDW who testified, had no knowledge of conversations that Brandt or Simmons had with other TDW employees. Tr. 211-12.

13 Official notice is taken, pursuant to 17 C.F.R. § 201.323, of the fact that TDW settled a proceeding related to its actions concerning BKS and two other investment advisers. *TD Waterhouse Investor Servs., Inc.*, 83 SEC Docket 2870 (Sept. 21, 2004). At the hearing Lindenbaum was represented by TDW's attorney, Richard D. Marshall of Kirkpatrick & Lockhart, the predecessor of Kirkpatrick & Lockhart Nicholson Graham LLP. Tr. 196.

14 The sundry account was a holding account for all monies that TDW credited to BKS; funds were transferred from there to BKS's bank account. Tr. 61, 244; Div. Exs. 7A-7H.

15 BKS now has a specific chief compliance officer. Tr. 233-34. This is a requirement of 17 C.F.R. § 275.206(4)-7(c), which became effective February 5, 2004. *Compliance Programs of Investment Companies and Investment Advisers*, 81 SEC Docket 3447, 68 Fed. Reg. 74714 (Dec. 24, 2003).

16 The NRS employee who assisted BKS was Jeremy Johnson. Tr. 158-60; Div. Exs. 16, 18, 19, 20. Johnson, a lawyer, was not working as a lawyer at NRS. Tr. 158, 165-66. His work on the BKS account started shortly after his September 25, 2000, arrival at NRS. Tr. 158, 167-68.

17 Johnson does not recall having the October 17, 2000, letter when he prepared BKS's Forms ADV. Tr. 161-62. BKS, however, had no motive to withhold the letter from NRS.

18 TDW did not have any formal protocols for handling the $7,500 payment; it was an ad hoc arrangement. Tr. 200-01. Later, TDW developed a Sales Incentive Program that included a procedure whereby investment advisers were instructed to disclose any payments from TDW on their Forms ADV. Tr. 200-03.

19 The amendment also disclosed that TDW provided BKS with up to $5,000 for Centerpiece Software consulting and training fees. Div. Exs. 20, 21. The OIP does not allege any violations involving the Centerpiece payment.

20 Since BKS reimbursed the clients with credits against their quarterly fees, it is literally true that BKS used TDW's actual cash payment for its own expenses. To conclude that this was a misappropriation of the $7,500 would mistakenly exalt form over substance.

21 The OIP also alleges that the Forms ADV failed to disclose that BKS misappropriated TDW's $7,500 payment. This allegation is mooted by the conclusion, supra, that BKS did not misappropriate the payment.

22 In its Post-Hearing Brief, the Division also references Item 12.B., which asks, "Does applicant or a related person suggest brokers to clients?" If so, the applicant is directed to describe "the factors considered in selecting brokers and determining the reasonableness of their commissions." The OIP, however, does not allege any deficiency in BKS's response to Item 12.B.

23 When the Commission determines administrative sanctions, it considers:
the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.
Steadman v. SEC, 603 F.2d at 1140 (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)).

24 In discussing the cost of new rules for small investment advisers, the Commission referenced, approvingly, the use of independent compliance experts. *Compliance Programs of Investment Companies and Investment Advisers*, 81 SEC Docket 3447, 3458 & n.105, 68 Fed. Reg. 74714, 74724 & n.105 (Dec. 24, 2003).

Release No. 289 (S.E.C. Release No.), Release No. ID - 289, 2005 WL 1584978

End of Document

EXHIBIT F

Release No. 305 (S.E.C. Release No.), 87 S.E.C. Docket 1011, Release No. ID - 305, 2006 WL 328035

S.E.C. Release No.
Initial Decision

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF BRANDT, KELLY & SIMMONS, LLC, AND KENNETH G. BRANDT

Administrative Proceeding File No. 3-11672
February 10, 2006

*1 BEFORE: Carol Fox Foelak, Administrative Law Judge

APPEARANCES:
John S. Yun, Sahil W. Desai, and Michael S. Dicke for the Division of Enforcement, Securities and Exchange Commission
Bradley J. Schram and Brian Witus of Hertz, Schram & Saretsky, P.C., for Respondents Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt

SUMMARY

This Initial Decision grants the application of Brandt, Kelly & Simmons, LLC (BKS) and Kenneth G. Brandt (Brandt) for an award of fees and expenses pursuant to the Equal Access to Justice Act (EAJA), in the amount of $11,926. BKS and Brandt had been exonerated of all charges in an administrative proceeding against them, and this Decision concludes that there was no substantial justification for prosecuting those charges after December 9, 2004. It further concludes that they incurred attorney fees and other expenses of $29,750 in defending themselves after that date and in litigating this EAJA proceeding. The amount awarded was reduced from the actual fees and expenses, pursuant to the $75 maximum hourly rate for attorney fees set by the Securities and Commission's (Commission) Rules as authorized by statute.

I. INTRODUCTION

A. Procedural Background

This Initial Decision concerns an Application for Fees and Expenses pursuant to the EAJA, 5 U.S.C. § 504, and Sections 201.31-.59 of the Commission's Rules, 17 C.F.R. §§ 201.31-.59, timely filed August 24, 2005, by BKS and Brandt. The Division of Enforcement (Division) filed an Answer on October 4, 2005, [1] and BKS and Brandt, a Reply on November 1, 2005, pursuant to 17 C.F.R. §§ 201.52 and .53, respectively. [2]

BKS and Brandt's EAJA application followed a final disposition that was favorable to them in a proceeding against them. Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt, 85 SEC Docket 3359 (A.L.J. June 30, 2005) (June 30, 2005, Initial Decision). The date of final disposition of the proceeding was July 26, 2005, when the June 30, 2005, Initial Decision became the final decision of the Commission. Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt, Investment Advisers Act Release No. 2408 (July 26, 2005). See 17 C.F.R. § 201.44(b). BKS and Brandt's filing on August 24, 2005, was within thirty days of that date, and thus timely under the EAJA and the Commission's Rules. See 5 U.S.C. § 504(a)(2); 17 C.F.R. §§ 201.44(a), .160.

*2 The Commission's Rules disfavor further proceedings, such as an evidentiary hearing, on matters at issue in an EAJA application, and emphasize a prompt decision by the administrative law judge. See 17 C.F.R. §§ 201.55, .56. The findings and conclusions in this Decision are based on the record, which includes the record in the original proceeding and filings in the EAJA proceeding. Pursuant to the EAJA, 5 U.S.C. § 504(a)(1), and 17 C.F.R. § 201.35(a), "[t]he burden of proof that an award

should not be made to an eligible prevailing applicant is on [the Division]." 17 C.F.R. § 201.35(a). All arguments and proposed findings and conclusions that are inconsistent with this Decision were considered and rejected.

B. Allegations and Arguments of the Parties

BKS and Brandt argue that they reasonably incurred fees and expenses, which were necessary to defend the proceeding against them and to litigate the EAJA proceeding, that total $76,000, when attorney fees are reduced to $125 per hour, the maximum allowable in the EAJA. They argue that the position of the Division in the proceeding against them was not "substantially justified" within the meaning of 5 U.S.C. § 504(a).

The Division argues that its position in the proceeding against BKS and Brandt was substantially justified. Additionally, the Division argues that the fees and expenses claimed are excessive.

II. FINDINGS OF FACT

The Commission commenced a proceeding, seeking various sanctions under the securities laws, against BKS and Brandt by an Order Instituting Proceedings (OIP) on September 21, 2004. The proceeding concerned the use of a $7,500 payment to BKS, a registered investment adviser, from TD Waterhouse Investor Services, Inc. (TDW), a broker-dealer that was custodian of BKS's client accounts and to which BKS directed client trades. The OIP alleged that the $7,500 was intended as fee reimbursements for BKS clients but that, instead, BKS used the money to pay its own operating expenses. Thus, the OIP alleged, BKS and Brandt misappropriated client assets in violation of the antifraud provisions of the Investment Advisers Act of 1940 (Advisers Act), Sections 206(1) and 206(2), and failed to disclose receipt of the money in Part II, Item 13.A. of BKS's Form ADV in violation of Section 207 of the Advisers Act. The OIP also alleged that Brandt violated and aided and abetted and caused BKS's violations of these provisions. The record of evidence was compiled in a two-day hearing on December 8 and 9, 2004, in Detroit, Michigan.[3] The June 30, 2005, Initial Decision, which became the final decision of the Commission, concluded that no violation alleged in the OIP was proved and dismissed the proceeding as to both BKS and Brandt.

A. Background Facts

*3 The following facts, concerning which there was no dispute, were found in the June 30, 2005, Initial Decision, which contains citations to the record. See Brandt, Kelly & Simmons, LLC, 85 SEC Docket at 3361-66.

Brandt, who has worked in the securities industry for more than thirty years, was associated with Linsco Private Ledger (LPL), a broker-dealer and registered investment adviser, from 1996 to 2001. In 2001, he and a colleague, Craig Simmons (Simmons), left LPL and established their own registered investment adviser, BKS, which opened for business in February 2001. They hoped to profit by offering clients better service at lower cost than at LPL. BKS, which had assets under management of about $135 million as of 2003, received about $1 million in annual revenue in 2001, 2002, and 2003.

BKS needed a custodian and broker-dealer for clients' brokerage accounts. After considering alternatives, Brandt and Simmons settled on TDW because it offered the lowest fees, technology that met their needs, and good service. The cost savings to customers included lower or no transaction fees, no annual maintenance fee, and significantly lower 12b-1 fees[4] in the same mutual funds that clients were already holding. TDW and BKS estimated that the average account would save more than $500 per year by transferring to TDW.

Brandt and Simmons hoped that their clients at LPL would follow them to BKS and discussed the benefits and costs of the move with each client. (Eventually, about 90% of their accounts at LPL moved to BKS.) The costs that a client might incur in transitioning to TDW included IRA termination fees,[5] mutual fund Class B share contingent deferred sales charges (CDSC),[6] bounced check fees, transaction costs from selling stock to put assets under management with BKS - anything related to a customer's transfer from LPL to TDW. BKS reimbursed more than $20,000 to clients for their costs of transferring, by giving

them credits against their quarterly management fees. [7] About $2,500 of this amount was for IRA termination fees. Brandt did not give any fee credits to himself or family members.

Brandt and Simmons asked TDW for reimbursement of fees to be incurred by clients transferring from LPL to TDW. Their principal contact at TDW was Sean Lindenbaum (Lindenbaum), and they also had discussions with others, including Lindenbaum's supervisor, Mark Avers (Avers). Eventually BKS and TDW settled on $7,500: on October 10, 2000, Lindenbaum telephoned and left a message for Brandt that TDW would "pay up to $7,500 in term. fees." The agreement was memorialized in an October 17, 2000, letter from TDW to Brandt, which stated in reference to this subject, in totality, "TDW is willing to commit up to $7,500 toward account termination fees." [8] The amount was not contingent on any particular amount of business or recommendation by TDW.

*4 TDW placed the $7,500 payment in BKS's account at TDW in May 2001. TDW annotated the entry in its records as "reimbursement of termination fees," with no mention of "IRA." From there, the funds were wired to BKS's bank account at the Huntington National Bank. Because BKS reimbursed the clients by means of credits against their quarterly fees, rather than writing checks payable to the clients, it is literally true that BKS used the $7,500 cash that TDW placed in BKS's account to pay its normal operating expenditures.

B. Account Termination Fees

The phrase "account termination fees" was not defined in the October 17, 2000, letter or elsewhere. In the proceeding against BKS and Brandt the Division argued that "account termination fees" meant, and was restricted to, the $50 fee charged by LPL for closing out IRA accounts. In the EAJA proceeding, the Division states that the undersigned resolved this issue by crediting Brandt's testimony and discrediting Lindenbaum's and argues that it would also have been reasonable to credit Lindenbaum's and discredit Brandt's.

At the hearing Brandt testified consistently that he was never told by TDW and never had any understanding that the $7,500 was for IRA termination fees only, and that he believed that the $7,500 could be used for reimbursement of CDSCs and other charges incurred by clients. [9] Tr. 113, 125. Lindenbaum's testimony was inconsistent on this point. In the Division's direct case Lindenbaum testified that he believed that the $7,500 was only for IRA account termination fees, that he does not remember discussing any fees with BKS other than IRA termination fees, and that his contemporaneous notes referring to "term. fees" and "ind. acct. termination fees" actually referred to IRA termination fees. [10] Tr. 191-94, 196, 229; Div. Ex. 5 at TD07551, TD0553. However, his testimony on cross- examination was inconsistent with this: he testified that he discussed with Brandt and Simmons a wide variety of fees and charges that clients would incur in transferring to TDW. Tr. 223, 318. In a nutshell, Lindenbaum's testimony cannot reasonably support a finding that the $7,500 was to be used only for IRA fees because his testimony on that point was inconsistent. Cross-examination, often described as "the greatest legal engine ever invented for the discovery of truth," [11] cannot be ignored. For this reason, it was found that Lindenbaum's discussions with BKS about fees and charges were not restricted to IRA termination fees and that TDW did not restrict the $7,500 to reimbursement of IRA termination fees only.

The Division did not become aware until shortly before the hearing that BKS and Brandt would argue that they had reimbursed clients more than $20,000 in termination fees. The argument was first made in BKS and Brandt's prehearing brief, filed on December 1, 2004, and the evidence concerning this was supplied between that date and the end of the hearing on December 9, 2004, in the form of Respondent Exhibits A and D and the testimony of Brandt and Simmons. Tr. 277-78. BKS first became involved in the investigation that led to the proceeding against it and Brandt when the Division, on April 29, 2003, sent it a subpoena referencing a formal order of investigation entitled In the Matter of Rudney Associates, Inc. (SF-2637). Div. Ex. 26. As relevant here, the Documents to be Produced specified: "18. All DOCUMENTS RELATING TO [BKS's] use of any money received from [TDW] in connection with an INCENTIVE CONTRACT." Div. Ex. 26 at 7-8. During the Division's investigation up until the time of the OIP, BKS and Brandt indicated that the amount of termination fees reimbursed was less

than $7,500. Tr. 89, 144-47. BKS and Brandt's Answer to the OIP was also in accord with this. [12] The Division maintains that it was unaware that BKS had reimbursed far more than the $7,500 it received from TDW because BKS and Brandt withheld the information that over $20,000 had been reimbursed, while BKS and Brandt maintain that the information had not been volunteered because the Division failed to ask the right questions.

*5 It is found that the Division became aware that BKS had reimbursed at least $20,000 as of the end of the hearing on December 9, 2004, when the hearing and record were closed. Tr. 115-27, 133, 136-37, 288-304; Resp. Exs. A1-26, D1-5, D7-12, D14-17, D19, D21-24, D27-31. At the conclusion of the hearing, BKS and Brandt's counsel suggested waiving posthearing filings, noting the need to hold costs down, but the Division indicated that it would not waive its rights (under the Administrative Procedure Act [13] and the Commission's Rules [14]) to make the filings. Tr. 334-45.

C. Fees and Expenses

BKS and Brandt request an award of fees and expenses in the amount of $76,000, including attorney fees reduced to $125 per hour. This sum, however, includes fees and expenses incurred before the September 21, 2004, commencement of the adversary adjudication at issue — the Commission's administrative proceeding against them.

BKS and Brandt's fees and expenses in the adversary proceeding from September 21, 2004, onward total $115,934. This includes expenses of $18,938 and attorney fees for 393.7 hours billed at hourly rates of $150 to $380. When attorney fees are reduced to $75 per hour, fees and expenses total $41,753. Fees and expenses after December 1, 2004, when the Division first learned that BKS and Brandt planned to present evidence that BKS had reimbursed more than $7,500, total $49,061, including expenses of $10,605 and attorney fees for 168.3 hours billed at hourly rates of $150 to $380. When attorney fees are reduced to $75 per hour, fees and expenses total $16,515. Fees and expenses after December 9, 2004, when the hearing and record closed, total $22,704, including expenses of $3,218 and attorney fees for 78.8 hours billed at hourly rates of $150 to $380. When attorney fees are reduced to $75 per hour, fees and expenses total $9,128.

Fees and expenses in the EAJA proceeding consist of attorney fees for 37.3 hours of $7,046. When attorney fees are reduced to $75 per hour, fees and expenses in the EAJA proceeding total $2,798.

D. Net Worth

BKS had fewer than 500 employees and a negative net worth, of approximately ($200,000), at the time of the OIP. Appl. at 3, Ex. C; Reply at 16 & n.6, Ex. A. Brandt's negative equity in BKS was approximately ($130,000). Reply at 16 & n.6, Ex. A. Brandt had a net worth of approximately $1,650,000 at the time of the OIP. Appl. at 4, Ex. D; Reply at 16 & n.5. Concerning the valuation Brandt placed on three properties, the Division urges that he has not provided detailed information regarding what the properties are worth and to whom any property liens are owed. [15] However, the Commission's Rules do not require such details in an applicant's statement of net worth, [16] and the Division has provided no evidence to question the valuations.

III. CONCLUSIONS OF LAW

There is no dispute that BKS and Brandt have met the following requirements of the EAJA: The proceeding against them was an "adversary adjudication" within the meaning of the EAJA. See 5 U.S.C. § 504(b)(1)(C). [17] They were "prevailing" in that the adversary adjudication against them was dismissed. See 5 U.S.C. § 504(a)(1). Additionally, each is a "party" consistent with the requirements of 5 U.S.C. § 504(b)(1)(B) in that BKS had not more than 500 employees and its net worth did not exceed $7,000,000 and Brandt's net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated. As discussed below, the Division's position in the proceeding against BKS and Brandt was "substantially justified" within the meaning of the EAJA, through December 9, 2004. However, after that date, continued prosecution of the proceeding against BKS and Brandt was not substantially justified.

A. Fees and Expenses

*6 BKS and Brandt argue that they should be awarded fees and expenses they incurred during the Division's investigation that predated the administrative proceeding against them. This argument is baseless. The EAJA applies to an adversary adjudication as defined in 5 U.S.C. § 504(b)(1)(C). An investigation is not an adjudication, as the Commission has long recognized. "[T]he Commission recognizes that the [EAJA] does not apply to ... Commission investigations." Equal Access to Justice Act Rules, 47 Fed. Reg. 609 (Jan. 6, 1982).

BKS and Brandt argue that they should be awarded attorney fees reflecting the $125 per hour statutory maximum provided in 5 U.S.C. § 504(b)(1)(A). The maximum attorney fee payable in this proceeding, however, is $75 per hour. The EAJA was amended, effective March 29, 1996, to raise the maximum attorney fee payable to $125 per hour, for adversary adjudications commencing on or after that date. The adversary adjudication against BKS and Brandt was commenced after that date, and their accounting includes attorney fees over $125 per hour. The Commission, however, has not amended its Rules to raise the allowable maximum, which remains at $75 per hour. See 17 C.F.R. § 201.36(b). BKS and Brandt argue that the higher EAJA rate is controlling. This argument is without merit. The EAJA proscribes agency awards above the maximum; it does not require agencies to award fees at the maximum. Specifically, it provides, "attorney or agent fees shall not be awarded in excess of $125 per hour." 5 U.S.C. § 504(b)(1)(A)(ii). In any event, the undersigned must follow the Commission's Rules.

The undersigned has examined the schedule of fees and expenses submitted by BKS and Brandt and found them to be reasonable and necessary in the defense of their case and the EAJA proceeding. BKS and Brandt even offered to waive posthearing filings to hold down expenses, but the offer was not accepted. There is no evidence that the amount sought exceeds the prevailing rate for similar services in the community in which counsel for BKS and Brandt ordinarily perform services.

B. Substantial Justification

The position of the agency was articulated in the OIP and the Division's conduct of the proceeding, including posthearing pleadings. The Division's position as to the facts was that BKS and Brandt misappropriated all or most of the $7,500 received from TDW instead of passing it on in fee reimbursements to clients. The Division's legal position was that BKS and Brandt thus violated the Advisers Act's antifraud provisions and violated its reporting provisions by failing to report the misappropriated $7,500 as compensation on BKS's Form ADV. Until the conclusion of the hearing on December 9, 2004, the Division's position was reasonable in fact and law. The Division was reasonable in its belief that BKS had reimbursed clients less than $7,500 and had used the remainder for its operating expenses. Its position was reasonable in law in that these facts could constitute violations as charged. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963.)

*7 The Division first learned on December 1, 2004, from BKS and Brandt's prehearing brief, that they were planning to prove that BKS had actually reimbursed more than $20,000. The Division first received documentary evidence of this, Respondent Exhibits A and D, on December 1 and 8, respectively. The Division notes that, had BKS and Brandt supplied this information earlier, the Division would have been able to evaluate it in deciding whether to recommend an enforcement action. As the Division correctly argues, on December 1, a postponement of the hearing would not have been granted to allow the Division time to evaluate the new evidence in light of the timeline requirements of 17 C.F.R. § 201.360(a)(2).

By the end of the hearing on December 9, after Brandt's and Simmons' testimony concerning Respondent Exhibits A and D, there could be no doubt that BKS had reimbursed more than $20,000. Also, as found above, the record could not reasonably support a finding that BKS was restricted to using the $7,500 solely to reimburse clients for LPL's $50 charge for closing out IRA accounts. This limitation was not found in the documentary evidence, and, as the Division notes, such a finding would have to rest on Lindenbaum's testimony. However, his testimony could not reasonably support a finding that the limitation existed because it was inconsistent on this point. Thus, a position that BKS had reimbursed less than, or otherwise misappropriated, $7,500 was not reasonable in fact, and a conclusion that it had violated the antifraud provisions by misappropriating the $7,500

instead of passing it on to clients in fee reimbursements was not reasonable in law. Likewise, since BKS did not retain the $7,500, it had no obligation to disclose it as compensation on its Form ADV. Accordingly, after December 9, 2004, the Division no longer had substantial justification to continue prosecuting the charges against BKS and Brandt, and they are entitled to an award of fees and expenses incurred after that date. See Leeward Auto Wreckers v. NLRB, 841 F.2d 1143 (D.C. Cir. 1988). Reasonable attorney fees in an EAJA proceeding include fees for litigating the EAJA proceeding as well as the original adversary adjudication. See Russo Sec., Inc., 54 S.E.C. (1999) (citing Commissioner, INS v. Jean, 496 U.S. 154 (1990); Trichilo v. Secretary of HHS, 823 F.2d 702, 707 (2d Cir. 1987)). As found above, when attorney fees are reduced to $75 per hour, the fees and expenses incurred by BKS and Brandt after December 9, 2004, in the adversary and EAJA proceedings total $11,926.

IV. RECORD CERTIFICATION

Pursuant to 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on March 1, 2005, and the items filed in this EAJA proceeding. Those items are: (1) BKS and Brandt's Application, titled "Verified Petition for Attorneys' Fees and Expenses," filed August 24, 2005; (2) the Division's Answer, filed October 4, 2005; and (3) BKS and Brandt's Reply, filed November 1, 2005.

V. PROCEDURAL ORDER

*8 IT IS ORDERED that the Declaration of Sahil W. Desai in Support of Division of Enforcement's Opposition to Respondents' Verified Petition for Attorneys' Fees and Expenses, including attached exhibits A-M, IS STRICKEN from the record of this proceeding.

VI. ORDER

IT IS ORDERED that Brandt, Kelly & Simmons, LLC, and Kenneth G. Brandt's Application for Fees and Expenses IS GRANTED in the amount of $11,926 and IS OTHERWISE DENIED.

This order shall become effective in accordance with and subject to the provisions of Section 201.57 of the Commission's Rules of Practice, 17 C.F.R. § 201.57. Pursuant to that rule, a petition for review of this Initial Decision may be filed within twenty-one days after service of the decision. If neither party seeks review and the Commission does not take review on its own initiative, this Initial Decision shall become a final decision of the Commission on March 13, 2006.

Carol Fox Foelak
Administrative Law Judge

Footnotes

1 With its Answer, the Division filed a document entitled "Declaration of Sahil W. Desai in Support of Division of Enforcement's Opposition to Respondents' Verified Petition for Attorneys' Fees and Expenses" (Declaration). The Declaration purports to describe the investigation that preceded the proceeding against BKS and Brandt and includes as exhibits numerous documents that were generated in the investigation. As such, the Declaration and exhibits relate solely to the issue of substantial justification, and will be stricken as inconsistent with the EAJA and the Commission's Rules. "Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought." 5 U.S.C. § 504(a)(1); accord, 17 C.F.R. § 201.55(a).

2 The Answer and Reply were timely filed. See Brandt, Kelly & Simmons, LLC, Admin. Proc. No. 3-11762-EAJA (A.L.J. Sept. 21, 2005) (unpublished); Brandt, Kelly & Simmons, LLC, Admin. Proc. No. 3-11762-EAJA (A.L.J. Oct. 21, 2005) (unpublished) (extending the filing dates for the Answer and Reply to October 4 and November 1, 2005, respectively).

3 Citations to exhibits offered in the hearing by the Division and by BKS and Brandt will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively. Citations to the transcript of the hearing will be noted as "Tr. __." Citations to BKS and Brandt's EAJA Application and Reply will be noted as "Appl. at __, Ex. __" and "Reply at __, Ex. __," respectively.

4 The 12b-1 fee, authorized by 17 C.F.R. § 270.12b-1, permits a fund to pay "distribution" expenses, including broker's commissions, and shareholder service expenses from fund assets.

5 LPL charged $50 to close an IRA account. Many clients were not concerned about small fees, such as the $50 IRA fee, because their savings from transferring to TDW would be so great. However, if a client complained about the $50 IRA fee, BKS offered to reimburse it. About 50 of about 200 IRA accounts received the $50 reimbursement. Brandt had originally estimated that he might reimburse as much as $15,000 for IRA fees.

6 Some clients, who had not been managed clients at LPL, decided to move to BKS and become managed clients, but had Class B shares of mutual funds subject to a substantial CDSC on redemption. At TDW, BKS obtained access to fund classes with no load or load waived and with significantly lower 12b-1 fees than clients were paying in the same funds.

7 The actual amount reimbursed was greater than the amount reflected in Resp. Exs. A1-26, D1-5, D7-12, D14-17, D19, D21-24, D27-31. Those exhibits reflect credits that exceeded an account's quarterly fee and were carried over to the next quarter. If the credit was less than the quarterly fee and did not have to be carried over to the next quarter, there was no separate tracking of the reimbursements.

8 Avers provided this language to Lindenbaum, who drafted the letter. TDW's compliance officer, Maria Seedner, reviewed and approved the letter. BKS did not draft any of the language in the letter.

9 As the Division argues, Brandt's testimony could be viewed as self-serving since he was a respondent. It must also be remembered that the Division, not Brandt, had the burden of proof in the proceeding against him and BKS.

10 The June 30, 2005, Initial Decision concluded that "Lindenbaum's direct testimony was biased in favor of placing himself and his employer, TDW, in the best possible light with Commission staff" (emphasis added) and noted that Lindenbaum was represented at the hearing by TDW's attorney. 85 SEC Docket at 3364 & n.13.

11 See, e.g, Lilly v. Virginia, 527 U.S. 116, 124 (1999).

12 BKS and Brandt's Answer states, in reference to OIP ¶ II.9., "Respondents deny the allegations in Paragraph 9, except that Respondents admit that in May 2001 TDW transferred $7,500 into BKS's general account and that BKS used a portion of those funds for general operating expenses. Respondents further state that BKS also used a portion of the funds to reimburse clients for account termination fees." Answer at 2.

13 5 U.S.C. § 557(c).

14 17 C.F.R. § 201.340(a).

15 The Division's Answer also argues that Brandt understated his net worth because his balance sheet does not include a valuation of his interest in BKS. This argument is mooted by the information supplied in BKS and Brandt's Reply concerning BKS's negative net worth and Brandt's negative equity in BKS.

16 See Equal Access to Justice Act Rules, 47 Fed. Reg. 609, 610 (Jan. 6, 1982).

17 Section 504(b)(1)(C) defines "adversary adjudication" as "an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license ...." The OIP cited Sections 203(e), 203(f), and 203(k) of the Advisers Act as authority for the proceeding against BKS and Brandt. Thus the proceeding was "on the record after notice and opportunity for hearing." Sections 203(e), 203(f) of the Advisers Act. Statutory requirements for adjudications under the Administrative Procedure Act are found at 5 U.S.C. §§ 554-59; 5 U.S.C. § 554(a) commences, "[t]his section applies ... in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing ...."

Release No. 305 (S.E.C. Release No.), 87 S.E.C. Docket 1011, Release No. ID - 305, 2006 WL 328035

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EXHIBIT G

United States Code Annotated
Title 15. Commerce and Trade
Chapter 2B. Securities Exchanges (Refs & Annos)

15 U.S.C.A. § 78u-2

§ 78u-2. Civil remedies in administrative proceedings

Currentness

(a) Commission authority to assess money penalties

(1) In general

In any proceeding instituted pursuant to sections 78*o*(b)(4), 78*o*(b)(6), 78*o*-6, 78*o*-4, 78*o*-5, 78*o*-7, or 78*q*-1, of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person--

(A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C.A. § 77aet seq.], the Investment Company Act of 1940 [15 U.S.C.A. § 80a-1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C.A. § 80b-1 et seq.], or this chapter, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(C) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

(D) has failed reasonably to supervise, within the meaning of section 78*o*(b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision; [1]

(2) Cease-and-desist proceedings

In any proceeding instituted under section 78u-3 of this title against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person--

(A) is violating or has violated any provision of this chapter, or any rule or regulation issued under this chapter; or

(B) is or was a cause of the violation of any provision of this chapter, or any rule or regulation issued under this chapter.

(b) Maximum amount of penalty

(1) First tier

The maximum amount of penalty for each act or omission described in subsection (a) of this section shall be $5,000 for a natural person or $50,000 for any other person.

(2) Second tier

Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be $50,000 for a natural person or $250,000 for any other person if the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(3) Third tier

Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be $100,000 for a natural person or $500,000 for any other person if--

(A) the act or omission described in subsection (a) of this section involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(B) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(c) Determination of public interest

In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider--

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been

convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78*o*(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

(d) Evidence concerning ability to pay

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission or the appropriate regulatory agency may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement

In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Security-based swaps

(1) Clearing agency

Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c-3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c-3 of this title.

(2) Security-based swap dealer or major security-based swap participant

Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 78c-3 of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 78c-3 of this title.

CREDIT(S)

(June 6, 1934, c. 404, Title I, § 21B, as added Pub.L. 101-429, Title II, § 202(a), Oct. 15, 1990, 104 Stat. 937; amended Pub.L. 107-204, Title V, § 501(b), July 30, 2002, 116 Stat. 793; Pub.L. 109-291, § 4(b)(1)(B), Sept. 29, 2006, 120 Stat. 1337; Pub.L. 111-203, Title VII, § 773, Title IX, § 929P(a)(2), July 21, 2010, 124 Stat. 1802, 1863.)

EFFECTIVE DATE OF 2010 AMENDMENT

<Unless otherwise provided, amendment by subtitle B (Secs. 761-774) of Title VII of Pub.L. 111-203, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and 2010 Effective and Applicability Provisions notes set out under this section.>

Notes of Decisions (2)

Footnotes

1 So in original. The semicolon probably should be a period.

15 U.S.C.A. § 78u-2, 15 USCA § 78u-2

Current through P.L. 113-234 approved 12-16-2014

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January 26, 2015

VIA ELECTRONIC MAIL
& EXPRESS OVERNIGHT DELIVERY

Honorable James E. Grimes
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
ALJ@sec.gov

Re: In the Matter of The Robare Group, Ltd., et al.
AP File No. 3-16047

Dear Honorable Judge Grimes:

Enclosed please find Respondents' Pre-Hearing Brief in connection with the referenced matter.

Should you have any questions please do not hesitate to contact me.

Very truly yours,

Heidi E. VonderHeide

HEV:ah
Enclosure

cc: Office of the Secretary (via facsimile transmission and express overnight delivery)
Janie L. Frank (via facsimile transmission and express overnight delivery)
Jessica B. Magee (via facsimile transmission and express overnight delivery)