



NASAA

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Submitted electronically to rule-comments@sec.gov

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington DC 20549-1090

Re: Amendments to Form ADV and Investment Advisers Act Rules; Release No. IA-4091; File No. S7-09-15

Dear Mr. Fields,

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I hereby submit the following comments regarding the Amendments to Form ADV and Investment Advisers Act Rules (“the proposal”).² NASAA shares the Securities and Exchange Commission’s (“SEC”) position that Form ADV serves a vital role in the oversight and regulation of investment advisers. NASAA is generally supportive of the proposal, especially the effort to fill certain data gaps and enhance reporting requirements. NASAA notes that several of the amendments, particularly those regarding private funds disclosures, would not apply to the majority of state-registered investment advisers, but is supportive of the SEC’s efforts to increase the information reported on the ADV and streamline certain requirements. The additional reported information will enhance the SEC’s capabilities in overseeing market risk and enhance the agency’s risk assessment and monitoring. In addition to generally supporting the proposal, NASAA offers its comments regarding discrete aspects of the proposal, including certain Form ADV amendments.

Form ADV and State-Registered Investment Advisers

Federal- and state-registered investment advisers use Form ADV to register to engage in advisory business. State securities regulators use data collected on Form ADV for multiple

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

² Amendments to Form ADV and Investment Advisers Act Rules, SEC Release No. IA-4091, File No. S7-09-15, 80 Fed. Reg. 33718 (June 12, 2015).

purposes including as part of the pre-registration review and preparing for examinations. Form ADV data and disclosures equip state securities regulators with the information necessary to conduct risk assessments, both regarding investment advisers in one state, and for investment advisers across jurisdictions. Such data informs state regulatory programs and provides raw data to assess emerging risks. Risk assessments are also informed through the bi-annual NASAA Coordinated Examinations Project, where state securities regulators voluntarily report a sampling of examination data to NASAA on a non-identifiable basis for a six month period. A NASAA working group then analyzes the results and identifies common regulatory deficiencies, many of which stem from Form ADV deficiencies.³

State securities regulators also mandate that state-registered investment advisers file Form ADV Part 1B, a separate component of Form ADV required solely for state-registered advisers, which supplements the information contained in Form ADV Part 1A. This information then also becomes part of state securities regulators' risk assessments and exam programs. Form ADV Part 1B elicits additional specific information regarding supervision and compliance points of contact, custody and bond/capital information, and disclosures regarding judgments, liens, arbitration, and civil judicial matters. Once the SEC completes its rulemaking process to amend Form ADV Part 1A, NASAA will consider beginning an internal revision process for Form ADV Part 1B to ensure there is no duplication between Form ADV Parts 1A and 1B.

NASAA Supports the Proposed Amendments to Form ADV Eliciting Information on Social Media Activity, the Advisory Business, and Third-Party Compliance Providers

The proposal allows for more robust information collection regarding key existing topics and emerging areas in the investment advisory industry. The proposal's expansion of information collection in existing areas includes additional information regarding the types of accounts at investment adviser firms, while also proposes to collect information in emerging areas including social media activity and the use of third party compliance providers. The collection of additional information in these areas will be of minimum burden to firms, and allow both SEC and state examiners to enhance their regulatory and examinations programs. NASAA generally supports all of the proposed amendments to Form ADV, but provides specific comments below regarding certain discrete aspects of the proposal's Form ADV amendments.

NASAA supports the addition of a question, in Item 5.C.(1) of Form ADV, that would require an investment adviser to disclose the approximate number of clients for whom the adviser does not have regulatory assets under management but to whom investment advisory services were provided. About 60% of state-registered investment advisers provide investment advisory services without managing assets, usually as financial planners. Therefore, such a question would elicit data that would be a useful addition for state securities regulators' examinations and oversight programs.

³ See NASAA Reports Similarities in Deficiencies Among Existing and Switching Investment Advisers, *available at* <http://www.nasaa.org/26897/nasaa-reports-similarities-deficiencies-among-existing-switching-investment-advisers/> (October 7, 2013). The 1,130 reported examinations uncovered 6,482 deficiencies in 20 compliance areas, compared to 3,543 deficiencies in 13 compliance areas identified in a similar 2011 examination of 825 investment advisers. NASAA anticipates releasing the 2015 iteration of this initiative in the fourth quarter of 2015.

While the majority of state-registered investment advisers have only one office, NASAA also supports the proposal's requirement that investment advisers disclose the total number of offices at which they conduct advisory business.⁴ This information will provide SEC and state examiners with important information about the investment adviser's business and to identify locations in which to conduct examinations.

NASAA strongly supports the collection of information on investment advisers' use of social media, including disclosure of the social media addresses investment advisers use.⁵ Such information will be helpful in understanding how advisers market information about their services across different social media platforms. Furthermore, with the constant growth of social media platforms, collecting this information will allow the SEC and state regulators to know not only which newer platforms investment advisers use, but specifically, when examining a particular adviser, how that adviser is communicating with its clients and advertising its services.

NASAA also supports the collection of information regarding the outsourcing of compliance functions at an investment adviser.⁶ The proposal currently contemplates amending Item 1.J to require an investment adviser to report whether its chief compliance officer is compensated or employed by any person other than the investment adviser or a related person of the adviser. The proposal explains that SEC examination staff has observed a wide spectrum of both quality and effectiveness of outsourced chief compliance officers and firms. State examiners have made the same observation and would appreciate the opportunity to collect data through Form ADV that would allow identification of all investment advisers relying on a particular service provider as that could improve the ability to assess risks. Use of third party service providers for compliance purposes is growing. NASAA encourages the SEC to elicit additional information regarding third party compliance service providers, including, but not limited to, the length of the relationship with the service provider and whether the service provider acts as a de facto chief compliance officer or supports the compliance functions.

The Proposed Amendments Regarding Separately Managed Accounts Will Enhance Transparency Regarding this Area of the Investment Advisory Industry

NASAA supports the proposal's amendments regarding the collection of additional information about separately managed accounts. These amendments would provide additional necessary information to the SEC and state regulators, as well as members of the public, far outweighing any regulatory burden the proposal creates. Increased transparency on transactions and ownership, particularly concerning the business of large SEC-registered investment advisers (greater than \$10 billion in assets), is a positive step. Such information will allow the SEC to engage in further risk analysis as part of its risk monitoring and market oversight responsibilities.

⁴ Proposed amendments to Form ADV Part 1A Item 1.F. and related Schedule D disclosures.

⁵ Proposed amendments to Form ADV Part 1A Item 1.I. and related Schedule D disclosures.

⁶ Proposed amendments to Form ADV Part 1A Item 1.J. and related Schedule D disclosures.

Furthermore, the proposal contemplates collecting commonly used metrics to allow for better understanding of the use of derivatives and borrowings by advisers in separately managed accounts. These metrics are also collected on Form PF for private funds, such that advisers that manage both private funds and separately managed accounts will be able to work with the same metrics in fulfilling their reporting requirements. NASAA also supports the proposal's requirement to identify any custodians that account for at least 10 percent of separately managed account regulatory assets under management, as well as the amount held at the custodian, as it further allows for risk monitoring. For example, should there be a concern about a particular custodian, SEC staff would be able to identify advisers whose clients use that custodian. That information is critical if the SEC needs to engage with the custodian regarding remediation of a particular regulatory issue.

The regulatory burden of the proposal's request that advisers report information on separately managed accounts is balanced out by the reasonable annual reporting requirement and the tiers of requirements, based on the size of regulatory assets under management. Specifically, by requiring less detailed reporting for advisers that manage less than \$10 billion in separately managed accounts' assets, and requiring reporting on borrowings and derivatives only with respect to separately managed accounts with a net asset value of at least \$10 billion, the proposal balances regulatory need for the information with minimizing the reporting burden on smaller advisers where appropriate. Finally, NASAA appreciates that the proposal contemplates amending Form ADV to ensure collection of information regarding whether an adviser, regardless of assets, manages separately managed accounts, as that would be helpful to state securities regulators in conducting risk assessments.

Additional Comments Regarding the Proposal

In addition to the above comments regarding some of the larger policy aspects of the proposal, NASAA offers the following comments:

- *“Umbrella registration”* – NASAA supports the proposed amendments regarding private fund advisers and “umbrella registration.” Umbrella registration allows for increased efficiency in the registration of multiple private fund entities operating a single advisory business through one Form ADV filing. It is unlikely that a state-registered adviser will take advantage of umbrella registration, but NASAA supports this concept becoming available to SEC-registered investment advisers, as uniform filing requirement also allow for greater comparability across private fund advisers.
- *Proposed Amendment to SEC Rule 204-2 Regarding Documentation of Performance Calculations* – NASAA supports the proposal's amendments to SEC Rule 204-2, which would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. As state securities regulators, we see on a constant basis the harm to investors who are drawn into an investment because of misrepresentations in performance claims. NASAA also supports that the proposal would require advisers to maintain original versions of all written communications received and

copies of written communications sent by an investment adviser related to the performance or rate of return of any or all managed accounts or securities recommendations. NASAA notes that the proposal contemplates a requirement similar to the NASAA Model Rule for Recordkeeping Requirements for Investment Advisers, which contains the following language:

All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.⁷

In closing, NASAA appreciates the opportunity to comment on the SEC's proposal to amend Form ADV and related rules. Should you have any questions about NASAA's comments, please feel free to contact Joseph Brady (jb@nasaa.org), Executive Director, or A. Valerie Mirko (vm@nasaa.org), Deputy General Counsel, via email or at (202) 737-0900.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William Beatty". The signature is fluid and cursive, with the first name "William" and last name "Beatty" clearly distinguishable.

William Beatty
NASAA President
Washington Securities Administrator

⁷ NASAA Model Rule on Recordkeeping Requirements for Investment Advisers, Model Rule 203(a)-2, *available at* <http://www.nasaa.org/wp-content/uploads/2011/07/IA-Model-Rule-Recordkeeping.pdf>.