

# INSIGHTS

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## THE CORPORATE & SECURITIES LAW ADVISOR

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### INVESTMENT MANAGEMENT

#### **The SEC Proposes a Plain English Brochure for Advisory Clients**

*The proposal for a new advisers brochure would dramatically change the structure, updating, and delivery obligations for the core disclosure document that investment advisers must provide their clients and prospective clients. It is an attempt by the SEC to provide more information and greater clarity to investment adviser clients.*

**by Kevin A. Zambrowicz, E. David Hwa, and Joshua B. Sterling**

On March 3, 2008, the Securities and Exchange Commission (SEC or Commission) proposed amendments to Part 2 of Form ADV that would require registered investment advisers to prepare and deliver narrative, “plain English” brochures to clients and prospective clients (Part 2 Proposal).<sup>1</sup> The Commission explained that the Part 2 Proposal is intended to require advisory firms to prepare a brochure (Firm Brochure) that provides a “clear, current, and more meaningful” description of an adviser’s business and potential conflicts of interest, particularly with respect to sources of compensation and soft dollar and other brokerage arrangements.<sup>2</sup> The Part 2 Proposal also would require

an adviser to provide current information on the background and disciplinary history of advisory personnel in a supplement to the Firm Brochure (Brochure Supplement).<sup>3</sup>

Advisory firms would be required to file their Firm Brochures through the IARD system.<sup>4</sup> The Firm Brochures would be available on the Commission Web site, although advisers still would be required to deliver their Firm Brochures to certain clients.<sup>5</sup> Advisers also would be required to provide clients with Brochure Supplements that describe the background, experience and disciplinary history of any supervised person providing advisory services to the client.<sup>6</sup> The adviser would not be required to file the Brochure Supplements with the Commission.<sup>7</sup>

The Part 2 Proposal includes many concepts that the Commission included in its April 2000 proposed amendments to Form ADV (2000 Proposal),<sup>8</sup> as well as many comments that industry groups and other interested parties provided on the 2000 Proposal.<sup>9</sup> The new Part 2 Proposal significantly would alter the manner and form in which investment advisers registered with the Commission disclose information about their operations to clients and prospective clients and are a significant departure from the 2000 Proposal. For example, the Part 2 Proposal makes changes to the following areas addressed in the 2000 Proposal: disclosure of standards used to calculate performance;<sup>10</sup> listing of all wrap fees programs;<sup>11</sup> disclosure of actual policies and procedures;<sup>12</sup> and identifying a specific individual as a contact for further information.<sup>13</sup>

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Interested parties have until May 16, 2008 to file their comments on the Part 2 Proposal with the Commission.

## **The Firm Brochure**

As proposed, the Firm Brochure would contain 19 items requiring narrative, plain English disclosures. The instructions to the Firm Brochure would provide that an adviser must respond only to the items that apply to its business, which is a departure from the more extensive disclosure that would have been required under the 2000 Proposal. An adviser would be required to describe only once any relationship or event that would respond to multiple items (*e.g.*, receipt of an economic benefit from a non-client, which must be addressed under Items 5 and 12). Advisers would be free to address the applicable items in any order, rather than following the sequence provided in the form.

In addition, an adviser would be required to describe any conflicts of interest associated with the disclosure items and how the adviser would address those conflicts.<sup>14</sup> This is a key difference from the 2000 Proposal, under which an adviser would have been required to include more lengthy discussions of its policies and procedures on conflicts of interest. The Commission expects that, as a general matter, the approach taken in the Part 2 Proposal would lead to more concise and meaningful disclosures to clients about specific conflicts.

### **Item 1. Cover Page**

The only change to the requirements for the Cover Page is the inclusion of the name and telephone number of a person or service center that a prospective client could contact for further information.<sup>15</sup> Advisers would be required to disclose a Web address only if they had one.<sup>16</sup>

### **Item 2. Material Changes**

Proposed Item 2 would require an adviser to include with the Firm Brochure a summary of all material changes to the Firm Brochure since the last annual updating amendment.<sup>17</sup> The Commission has proposed that the summary of changes appear

prominently in the Firm Brochure, either on the cover page or the page following the cover. In the alternative, an adviser could provide the summary as a separate document, in which case the summary would not be filed with the Commission and would not be publicly available. The adviser would be required to keep a copy of any separately-provided summary as part of its books and records.

On balance, it appears likely that the Commission envisions a narrative summary and that the language in the proposed Firm Brochure was not intended to suggest otherwise. If so, we think it likely that advisers would struggle to determine the appropriate level of detail to disclose under proposed Item 2. It is conceivable that an adviser could be criticized, by its clients or the Commission staff, for having omitted certain information necessary to make the summary accurate in all material respects. This possibility could cause the adviser, out of an abundance of caution, to prepare a brochure-within-the-brochure that would discuss at length all relevant aspects of each material change. We doubt whether this is an outcome that the Commission would find desirable.

As a result, it would be helpful for the Commission to provide further guidance on the nature and extent of the disclosure that would be required by proposed Item 2. For example, the Commission may wish to consider indicating that prominent, bullet-style lists of all material changes that would refer readers to more complete disclosure in the Firm Brochure would be acceptable.

### **Item 3. Table of Contents**

This requirement remains unchanged but the Commission is seeking comment regarding whether the Commission should dictate a uniform format for the Table of Contents.

### **Item 4. Advisory Business**

Proposed Item 4 would require an adviser to describe its advisory business, including the types of advisory services offered, whether it holds itself out as specializing in a particular type of advisory service, and the amount of client assets that it manages.

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In calculating the amount of assets that it manages the adviser would be permitted to use a method different from the one used to calculate “assets under management” for Part 1A of Form ADV,<sup>18</sup> but the adviser would need to keep records describing the methodology used.

The Commission is eliminating two other requirements.<sup>19</sup> Commenters convinced the Commission that the 2000 Proposal to require advisers to list all wrap fee programs would unnecessarily lengthen the Firm Brochure so that disclosure has been eliminated. Also, the current requirement in Part 2 that advisers list and describe all periodicals or periodic securities reports that the adviser issues, has been eliminated. The Commission determined that clients and prospective clients should be able to understand the nature of an adviser’s services without the names of each of the adviser’s publications.

### **Item 5. Fees and Compensation**

Proposed Item 5 would require an adviser to disclose how it is compensated for providing advisory services and to describe the other costs, such as brokerage, custody fees, and fund expenses that a client may pay in connection with the advisory services.<sup>20</sup> In addition, the adviser would be required to disclose its fee schedule and whether its fees are negotiable, whether the firm bills clients or deducts fees from clients’ accounts, and explain how often the firm assesses fees.

In addition, if the adviser or its advisory personnel receive brokerage commissions (*i.e.*, compensation attributable to the sale of a security or other investment product), the adviser would be required to describe the conflict of interest that this practice creates and how the adviser addresses that conflict. The adviser would be required to disclose that clients may purchase the same securities or investment products from brokers that are not affiliated with that adviser. If the adviser receives more than half of its revenue from those brokerage commissions, the adviser would be required to state that the brokerage commissions and other salesbased compensation are its primary source of compensation.<sup>21</sup> If an adviser charges both advisory fees and brokerage commissions, it would have to disclose whether it

reduces the advisory fees to offset the commissions. The Commission is not proposing that advisers disclose the amount or range of mutual fund fees or other third-party fees that clients may pay, only that the adviser provide information about these fees.<sup>22</sup>

### **Item 6. Performance Fees and Side-by-Side Management of Accounts**

Proposed Item 6 would require an adviser to disclose, if applicable, that it charges performance fees or that there are one or more supervised persons who manage accounts that charge performance fees.<sup>23</sup> If such an adviser also manages accounts that are not charged performance fees, then it must discuss the conflicts of interest that arise from managing both types of accounts. The adviser also would be required to discuss how it addresses those conflicts.

The Commission indicated that proposed Item 6 was prompted by its concern that advisers may favor accounts that pay performance fees. The Commission suggested that the likelihood for this conflict has increased, in part, because of the rise of hedge funds over the last several years. It also expressed concern regarding advisers that manage proprietary accounts that pay performance fees alongside client accounts that did not pay performance fees. The Commission has requested comment on what additional disclosures might help clients understand the conflicts of interest associated with managing accounts that have different fee structures.

### **Item 7. Types of Clients**

As proposed in the 2000 Proposal, the adviser would be required to describe the types of advisory clients the firm generally has and the firm’s requirements for opening or maintaining an account, such as minimum account size.<sup>24</sup>

### **Item 8. Methods of Analysis, Investment Strategies, and Risk of Loss**

As proposed in the 2000 Proposal, the adviser would be required to describe its methods of analysis and investment strategies and discuss the risks clients face in following the adviser’s advice. Advisers that offer a wide variety of advisory services could

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simply explain in the Firm Brochure that investing in securities involves a risk of loss. The adviser could then discuss specific risks with clients on an individual basis. This item also would require advisers to discuss the impact of “frequent trading of securities”<sup>25</sup> on investment performance if that was part of a strategy they use. Finally, this item would require advisers to provide a concise, general explanation of how the adviser handles cash balances where the client has not provided specific directions.

### **Item 9. Disciplinary Information**

Proposed Item 9 would require an adviser to disclose in the Firm Brochure the legal and disciplinary information required under Rule 206(4)-4<sup>26</sup> (*i.e.*, certain criminal, civil, administrative, and securities industry adjudications). Item 9 would keep the same list of material disciplinary events and materiality standards as Rule 206(4)-4 with the caution that the list is not exhaustive.<sup>27</sup> The Commission indicated that it would repeal the rule if it were to adopt this Item. The Commission further reminded advisers that the adviser’s fiduciary duty would continue to require full and fair disclosure of material disciplinary or legal events or inability to meet contractual commitments to all clients including clients to whom the adviser was not required to deliver a Firm Brochure.<sup>28</sup>

The Commission requested comment on whether it should revive its proposal to require an adviser to deliver copies of administrative orders to its clients. As the Commission acknowledged in the Part 2 Proposal, it has the authority to require, where appropriate, the delivery of administrative orders as it deems appropriate.<sup>29</sup>

### **Item 10. Other Financial Industry Activities and Affiliations**

Proposed Item 10 would require an adviser to describe any material relationship or arrangement with a related person, any related conflicts of interest, and how the adviser addresses those conflicts.<sup>30</sup> This requirement would apply to material relationships between a related person and either the advisory firm or a “management person” of the firm (*e.g.*, an executive officer or an investment committee member).<sup>31</sup>

The term “related person” would include officers, partners, directors, and employees of the adviser, and any person controlling, controlled by, or under common control with the adviser.<sup>32</sup> The related persons listed under proposed Item 10 include: broker-dealers; other investment advisers and financial planners; futures intermediaries; banking institutions; accountants and accounting firms; lawyers and law firms; insurance companies; pension consultants; real estate professionals; and sponsors and syndicates of limited partnerships.

Proposed Item 10 describes materiality by reference both to the adviser’s business and to its clients.<sup>33</sup> This is an exceptionally broad reference. It could encompass relationships that are material to some, but not all, clients. For example, a \$5,000 referral agreement between a portfolio manager and an affiliated broker-dealer may not be material to the firm’s business, but it may be material to a client who has \$50,000 in assets under management with that manager. The Commission indicated that it would not propose to define the term “material relationship,” but requested comment on whether it should do so. Either a definition or interpretive guidance on this issue would be helpful.

Separately, if an adviser selects or recommends other advisers for clients, proposed Item 10 would require the adviser to disclose any compensation arrangements or other business relationships between the two advisory firms.<sup>34</sup> Proposed Item 10 also would require a description of any related conflicts of interest and how the adviser addresses those conflicts. This disclosure requirement would not be limited to material relationships and arrangements.

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

*Code of Ethics.*<sup>35</sup> The proposed Item continues to require the adviser briefly describe its code of ethics and state that a copy is available upon request.

*Participation or Interest in Client Transactions.*<sup>36</sup> If the adviser or a related person recommends to clients, or buys or sells for clients, securities that the

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adviser or related person has a material financial interest then the Firm Brochure must discuss this practice and the associated conflicts and how the adviser has dealt with those conflicts.

*Personal Trading.*<sup>37</sup>The adviser must disclose whether it or a related person is permitted to invest in the same securities that it recommends to clients, or in related securities such as options or other derivatives. If such trading is allowed then the adviser must discuss the associated conflicts and how the adviser addresses the conflicts. If the adviser allows itself or related persons to trade in the same securities as a client at or about the same time, then the adviser must disclose this practice and discuss how it deals with the related conflicts.<sup>38</sup>

## Item 12. Brokerage Practices

Proposed Item 12 would require detailed disclosure regarding soft dollar arrangements, client referrals, trade aggregation, and directed brokerage.<sup>39</sup> Proposed Item 12 also would require detailed disclosure of conflicts of interest associated with each practice.

*Soft Dollars.*<sup>40</sup> An adviser would be required to describe its soft dollar practices in enough detail for clients and prospective clients to understand the types of products and services that the adviser (or any of its related persons) has acquired with client brokerage commissions within the adviser's last fiscal year. An adviser must provide a more detailed description of products or services that do not qualify for the safe harbor for soft dollar arrangements provided by Section 28(e) of the Securities Exchange Act of 1934.

An adviser also must identify and describe all of the conflicts of interests that arise under soft dollar arrangements. Accordingly, an adviser that pays for brokerage with soft dollars would be required to explain:

- The adviser benefits from not having to produce or pay for the research or other products or services acquired with soft dollars;
- The adviser has an incentive to select or recommend broker-dealers based on the adviser's

interest in receiving these benefits, rather than on the client's interest in obtaining best execution for its trades;

- If applicable, the adviser causes clients to pay commissions higher than those charged by other brokerdealers in return for soft dollar benefits;
- Whether the adviser uses soft dollar benefits to service all of its clients' accounts or only the accounts of those clients who have paid for the benefits; and
- Whether the adviser seeks to allocate soft dollar benefits to clientaccounts in proportion to the soft dollar credits that the accounts generate.
- The procedure the adviser used during the last fiscal year to direct client transactions to a particular broker-dealer in return for soft dollar benefits.

The Commission explained that proposed Item 12 was not intended "to create a negative impression" of soft dollar arrangements. Rather, the Commission asserted that it is seeking only to require full disclosure of arrangements that it believes "involve significant conflicts of interest." Regardless of the Commission's motives, it seems likely that this proposal, were it adopted, would have a chilling effect on soft dollar arrangements. Accordingly, the Commission's proposal may reflect an effort to diminish the use of soft dollar practices in the absence of Congress repealing the Section 28(e) safe harbor—a legislative initiative that Chairman Cox has publicly supported.<sup>41</sup>

*Client Referrals.*<sup>42</sup> An adviser would be required to disclose if the adviser uses client brokerage to reward brokers for client referrals and any procedures the adviser used to direct client brokerage to referring brokers during the last fiscal year. Advisers also must discuss the conflict of interest this creates and that the adviser may have an incentive to select or recommend a broker-dealer based on the adviser's interest in receiving clientreferrals, rather than on the clients' interest in receiving best execution.

*Trade Aggregation.*<sup>43</sup> An adviser would be required to describe, if applicable, under what conditions it aggregates client transactions for execution. If the adviser does not aggregate trades when it has the opportunity to obtain volume discounts,

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the adviser would be required to disclose that clients may pay higher brokerage costs.

*Directed Brokerage.*<sup>44</sup> Proposed Item 12 would contain different disclosures based on whether an adviser permits clients to direct brokerage or whether the adviser routinely recommends, requests, or requires that clients do so. In the former case, the adviser would be required to explain that the adviser may be unable to obtain best execution, and that directing brokerage may result in higher costs. (This disclosure would not be required if the adviser only permitted clients to direct brokerage subject to its ability to obtain best execution.) In the latter case, the adviser would be required to explain that not all advisers require directed brokerage and to discuss any directed brokerage arrangement that creates a material conflict of interest.

### **Item 13. Review of Accounts**

Proposed Item 13 would require an adviser to disclose whether, and how often, it reviews clients' accounts or financial plans, and to identify who conducts the review.<sup>45</sup> If accounts are not regularly reviewed then the adviser must disclose under what circumstances an account would be reviewed.

### **Item 14. Payment for Client Referrals**

An adviser would have to disclose any payment it or a related person makes for client referrals.<sup>46</sup> This would include whether the adviser received any benefit, including sales awards or prizes, from a non-client for providing advisory services to clients.

### **Item 15. Custody**

The Commission has attempted to mesh this item from the 2000 Proposal with the amendments to the investment adviser custody Rule 206(4)-2.<sup>47</sup> Advisers with client assets held at a custodian pursuant to Rule 206(4)-2 would only need to explain that clients will receive account statements from the custodians and should review them carefully.<sup>48</sup> For instances when clients do not receive account statements from a custodian, the adviser would need to disclose that it has custody and explain the risks that client would face as a result.

### **Item 16. Investment Discretion**

This item continues to require disclosure if the adviser accepts discretionary authority and what limitations customer may or customarily do place on this authority.<sup>49</sup> The adviser also must describe the procedures it follows before assuming discretionary authority.

### **Item 17. Voting Client Securities**

If an adviser accepts authority to vote client securities, proposed Item 17<sup>50</sup> would require the adviser to disclose the voting policies it has adopted under Rule 206(4)-6.<sup>51</sup> In addition, Proposed Item 17 would require an adviser to describe whether and how clients can direct the advisers to vote in a particular solicitation, how the adviser addresses conflicts of interest when it votes securities, and how clients can obtain information from the adviser on how the adviser voted their securities. Item 17 also would require an adviser to explain that clients may obtain a copy of the adviser's proxy voting policies and procedures upon request. Advisers that do not have authority to vote would have to disclose how clients will receive their proxies and other solicitations.

Proposed Item 17 also would require an adviser to list any thirdparty proxy voting service on which it routinely relies to vote client securities. In addition, the adviser also would be required to describe how it selects and pays for those services.

### **Item 18. Financial Information**

This item would require the disclosure of certain financial information about the adviser.<sup>52</sup> If the adviser requires prepayment of more than \$1,200<sup>53</sup> in fees the adviser must give clients an audited balance sheet showing the adviser's assets and liabilities at the end of its most recent fiscal year. If the adviser has discretionary authority, custody of client funds or securities, or requires or solicits prepayment of more than \$1,200, the adviser would be required to disclose any financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients. In addition, an adviser would be required to

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disclose if it had been the subject of a bankruptcy petition in the last 10 years. The Commission notes that this information currently is required to be disclosed by Rule 206(4)-4, which the Commission is proposing to rescind in light of these proposed amendments. In addition, the Commission reminds advisers that their fiduciary duty would continue to require material legal events or precarious financial conditions be disclosed to all clients, including clients who do not receive the adviser's Firm Brochure.<sup>54</sup>

### **Item 19. Index**

An index of the Firm Brochure will be required to be filed with the Commission as part of the Firm Brochure but it will not have to be provided to clients.

### **Delivery and Updating of Brochure**

The Commission proposes to amend Rule 204-3<sup>55</sup> that currently requires advisers to deliver and update their Firm Brochures to clients and prospective clients. Advisers would continue to be required to deliver a current Firm Brochure before or at the time of entering into an advisory contract with a client but the requirement to deliver the Firm Brochure at least 48 hours before or allowing the client the right to terminate the contract five business days after has been dropped.<sup>56</sup> Advisers would not be required to deliver a brochure to certain advisory clients that only receive impersonal investment advice<sup>57</sup> or to clients that are investment companies registered under the Investment Company Act of 1940 (Investment Company Act). The amendments would add business development companies to the list of clients to whom an adviser would not have to deliver a Firm Brochure, however, as the Commission notes, Section 15(c) of the Investment Company Act<sup>58</sup> separately requires boards of directors to request, and advisers to provide, this information.<sup>59</sup> In addition, the proposed amendments would require advisers deliver its current Firm Brochure to existing clients at least once a year no later than 120 days after the end of the adviser's fiscal year.<sup>60</sup>

As currently required, advisers would have to update their Firm Brochure at least annually and

update it promptly when information in the Firm Brochure became materially inaccurate.<sup>61</sup>

### **The Brochure Supplement**

Under the Part 2 Proposal, a client would receive a Brochure Supplement with respect to each supervised person who either (a) formulates advice for that client and has direct client contact, or (b) makes discretionary investment decisions for the client's assets, even if the person has no direct client contact.<sup>62</sup> In the latter case, a client would not receive a Brochure Supplement for supervised persons who provide discretionary advice only as part of a team and have no direct client contact.<sup>63</sup>

### **Content of Supplement**

The Commission explained that a Brochure Supplement typically would be less than a page long and would include the following information about a supervised person:<sup>64</sup>

- Education;
- Business experience;
- Disciplinary history;
- Other business activities (and any associated conflicts of interest); and
- Compensation received from sources other than clients.

The Brochure Supplement also would explain how the firm monitors the advice provided by the supervised person.

### **Delivery Requirements**

The Commission has proposed that an adviser would not be required to deliver Brochure Supplements to certain clients:<sup>65</sup>

- Clients that are not entitled to a Firm Brochure, such as registered investment companies and business development companies;
- Clients who receive impersonal investment advice;<sup>66</sup>
- "Qualified purchasers," as defined by Section 2(a)(51) under the Investment Company Act (e.g., natural persons who own \$5 million or

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more in investments, and persons who manage \$25 million or more in investments for their own account or accounts of other qualified purchasers); and

- “Qualified clients,” as defined by Rule 205-3(d)<sup>67</sup> under the Advisers Act, who are affiliated with the adviser.

The Commission is seeking comment on whether the exclusion of all “qualified clients” would be appropriate (*e.g.*, a person with at least \$750,000 under management with the adviser or having a net worth of \$1.5 million), or whether it should use a higher threshold of sophistication for natural persons, such as its proposed “accredited natural person” definition (*e.g.*, a person with a net worth of \$2.5 million and who meets either the net worth or income test of Regulation D<sup>68</sup> or Rule 215<sup>69</sup> under the Securities Act of 1933,<sup>70</sup> as applicable).

## Updating Requirements

Advisers would be required to deliver updated Brochure Supplements to existing customers whenever Brochure Supplement information became inaccurate, when there was a new disclosure of a disciplinary event or when there was a material change to disciplinary information already disclosed.<sup>71</sup> Advisers would not be required to deliver Brochure Supplements to existing clients annually.

## Conclusion

The Commission’s Part 2 Proposal would dramatically change the structure, updating, and delivery obligations for the core disclosure document of Commission registered investment advisers. If this proposal is adopted, all Commission registered investment advisers will have to make significant changes to this important client disclosure document. In addition, for the first time the Part 2 will be available to the public on the internet over the IARD system. Moreover, for the first time, a separate document disclosing core information about certain individuals working for Commission registered investment advisers will be required to be provided to the adviser’s clients.

## NOTE

1. Amendments to Form ADV, Advisers Act Release No. 2711 (Mar. 3, 2008) (Part 2 Proposal) This article discusses the amendments as they may impact advisers registered with the SEC. There are several amendments that only affect state-registered advisers (proposed Item 20 of Part 2A, proposed Item 11 of Appendix 1 to Part 2A, and proposed Item 7 of Part 2B). Comments regarding the state related amendments should be sent to the North American Securities Administrators Association at [part2comments@nasaa.org](mailto:part2comments@nasaa.org).
2. *Id.* at 1.
3. Part 2 Proposal, *supra* n.1, at 53.
4. *Id.* at 7.
5. *Id.* at 47.
6. *Id.* at 53-54.
7. *Id.* at 70.
8. Electronic filing by Investment Advisers; Proposed Amendments to Form ADV, Advisers Act Release No. 1862 (Apr. 5, 2000).
9. Part 2 Proposal, *supra* n.1, at 9.
10. *Id.* at 8 n. 14 (Commission removed proposed requirement to disclose standards used to calculate performance.)
11. *Id.* at 10 n.20 (Commission removed requirement to list all wrap fee programs that adviser participates in.)
12. *Id.* at 10 (Commission proposes explaining succinctly how adviser addresses conflicts rather than disclosing adviser’s policies and procedures.)
13. *Id.* at 12 (Commission replaces individual with service center as contact for further information.)
14. *Id.* at 8-9 (The amendments are intended as guidance on fulfilling an adviser’s statutory disclosure obligations and not intended to cover every possible conflict. As a result, delivering a brochure prepared in accordance with these amendments may not fully satisfy an adviser’s disclosure obligations.)
15. *Id.* at 11-12.
16. *Id.* at 12.
17. *Id.* at 12-13.
18. *Id.* at 14 (The methodology used in Part 1A of Form ADV is designed specifically for making the determination as to whether an adviser should register with the Commission or with the states. Under Item 4 an adviser would be able to use a method that provides a more accurate view of the adviser’s business. For instance, for Part 1A an adviser would not include any non-securities portfolios that the adviser managed but could include such non-securities portfolios in Item 4.)
19. *Id.* at 15.
20. *Id.* at 16-18.
21. *Id.* at 17 n.43.
22. *Id.* at 18.
23. *Id.* at 19-20.
24. *Id.* at 21.
25. *Id.* at 22 (“frequent trading” left undefined for flexibility).
26. 17 C.F.R. § 275.206(4)-4 (2008).
27. Part 2 Proposal, *supra* n.1, at 24-25.

28. *Id.* at 27.
29. *Id.* at 26.
30. *Id.* at 28.
31. *Id.*, attached Form ADV, Appendix B, Glossary of Terms (Glossary).
32. *Id.*, attached Glossary.
33. *Id.* at 29, n.76.
34. *Id.* at 28.
35. *Id.* at 29.
36. *Id.* at 30.
37. *Id.* at 31.
38. *Id.* at 30 note 81 (The Commission is not proposing that the disclosure regarding principal trades with advisory clients required pursuant to Rule 206(3)-3T be disclosed in Part 2 of Form ADV.)
39. *Id.* at 32.
40. *Id.* at 33.
41. Letter from Christopher Cox, SEC Chairman to Sen. Christopher Dodd, Senate Banking Committee Chairman and Rep. Barney Frank House Financial Services Committee Chairman (May 17, 2007).
42. Part 2 Proposal, *supra* n.1 at 36.
43. *Id.* at 36.
44. *Id.* at 37.
45. *Id.* at 38.
46. *Id.* at 38.
47. 17 C.F.R. § 275.206(4)-2 (2008).
48. Part 2 Proposal, *supra* n.1, at 40.
49. *Id.* at 40.
50. *Id.* at 40.
51. 17 C.F.R. § 275.206(4)-6 (2008) (Requires advisers adopt and implement written voting policies and procedures. If adviser exercises voting authority over client securities adviser must describe voting policies and procedures to clients and provide clients a complete copy upon request.)
52. Part 2 Proposal, *supra* n.1, at 43.
53. *Id.* at 43 n.123 (This is an increase from the current threshold amount of \$500 in fees per client.)
54. *Id.* at 44 n.125.
55. 17 C.F.R. § 275.204-3 (2008).
56. Part 2 Proposal, *supra* n.1, at 47 n.135.
57. *Id.* at 47 n.136 (Advisers would not be required to deliver a brochure to advisory clients receiving only impersonal investment advice for which the adviser charged less than \$500 per year an increase from the current \$200 threshold.) See Rule 204-3. See generally Glossary (Impersonal Investment Advice: Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.)
58. 15 U.S.C. 80a-15(c) (2008).
59. Part 2 Proposal, *supra* n.1, at 48 n.137.
60. *Id.* at 50.
61. *Id.* at 51 note 150 (Advisers would not be required to update their brochure solely because of a material change in client assets or a change in the adviser's fee schedule.)
62. *Id.* at 55.
63. *Id.* at 55 n.164 (The Commission believes that when investment advice is formulated by a team, specific information about each individual team member takes on less importance.)
64. *Id.* at 53-54 and attached Form ADV: Part 2B.
65. *Id.* at 56-57.
66. *Id.* at 57 n.165 (This exemption applies even when the \$500 threshold is exceeded.)
67. 17 C.F.R. § 275.205-3(d) (2008).
68. 17 C.F.R. § 230.105-08 (2008).
69. 17 C.F.R. § 230.215 (2008).
70. 15 U.S.C. §§ 77a-77aa (2008).
71. Part 2 Proposal, *supra* n.1, at 59.

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