

## Investment Management E-news

February 2008

### SEC Proposes Plain English Narrative Disclosure By Investment Advisers To Investors

On February 13, 2008, the Securities and Exchange Commission (the "Commission") voted unanimously to propose amendments to Part 2 of Form ADV, the investment adviser brochure, and related rules under the Investment Advisers Act of 1940 that would require investment advisers to prepare and deliver to clients and prospective clients a narrative brochure written in plain English. Part 2 of Form ADV is the portion of Form ADV that elicits information about advisers' business practices, including the types of advisory services they provide, fees they charge, and other business information.

The SEC initially proposed a narrative version of the Part 2 information in its [Release No. IA-1862; 34-42620; File No. S7-10-00; Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV](#) (April 5, 2000). Commenters on that proposal overwhelmingly supported a narrative format for Part 2 as an improvement over the current format.

Most advisers currently use a check-the-box, fill-in-the-blank format for their brochures. The plain-English narrative brochure being proposed by the Commission would require more detailed information about an adviser's business practices, including the types of advisory services it provides, fees it charges, and the risks that clients can anticipate. The narrative also would disclose the disciplinary history of an investment adviser including any violation of the securities laws, as well as conflicts of interest such as the use of affiliates to execute transactions, the use of client brokerage to obtain soft dollar benefits, and the adviser's interests in certain transactions.

The Commission proposal also would address developing areas of concern, including conflicts of interest arising from the side-by-side management of clients who pay performance fees (such as hedge funds) and those who do not; conflicts of interest arising from an adviser's receipt of compensation from issuers of financial products the adviser recommends to clients; and qualifications of a firm's employees who give advice to clients.

The proposal would require advisers to file their brochures electronically with the Commission, and the brochures would be made available to the general public through the Commission-sponsored Investment Adviser Public Disclosure Website.

The Commission is requesting public comment on the proposed amendments no later than 60 days after their publication in the Federal Register.

If you would like more information about the foregoing or about the regulation of investment advisers generally, please feel free to contact the following Butzel Long Lawyers:

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