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December 12, 2010

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear SEC,

Subject: Comments on File No. S7-36-10, "Rules Implementing Amendments to the Investment Advisers Act of 1940"

Thank you for providing the opportunity to comment on proposed Rules and Rule changes associated with implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Release (No. IA-3110) clearly shows that considerable thought and care went into the Commission's proposals.

Executive Summary: We recommend extending the Commission's proposed 60-day grace period to transition to State registration to 180 days. We further recommend instituting a $20M buffer, from $100M to $120M, where an IA could be registered with either the SEC or their state.

1) **Rule 203A-5**
This rule governs transition from SEC to state regulation for IAs with less than $100M in assets under management (AUM).

a) We applaud the fact that the AUM snapshot can use end-of-quarter data (i.e., the June 30 2011 AUM value). As RIAs traditionally value their accounts at the end of each quarter, this precludes additional administrative burden solely to determine whether transition to state regulation is warranted.

b) HOWEVER, the 60 day requirement to withdraw Commission registration is <u>dramatically too short</u>. We STRONGLY urge the Commission to extend the proposed 60 day "grace period" to the traditional 180 days that the Commission has generally applied to the SEC to state transition process.

i) When we initially applied for state registration in 2001, it took 122 days from submission of the application to the state approving the application. During this time, there was substantial "back and forth" between the state regulator and the applicant. The state demanded many detailed changes both in our Form ADV, our firm's capital structure, and each of our proposed client contracts. Each iterative "round" of negotiation between the applicant and the regulator required research, thought, and consultation with legal counsel. The regulator even found it necessary to consult with the state Attorney General on one issue. The fact that the state application process actually took as long as 122 days seems to be "prima-facie" evidence that the proposed 60 day window is inadequate. Further, this 122 day experience was during a time when the state regulator wasn't being challenged with a dramatic influx of new applications, as will be the case in mid-2011.

ii) Our state regulator made it clear that they would be examining extremely closely each and every Form ADV and proposed client contract for each and every new applicant. Given the extremely detailed nature of their review, and the dramatic influx of applications in mid-2011, they expect to have relatively long periods after submission before they will be able to even begin considering an application. They warned, quite sensibly, that they would consider each such application in the order in which it was submitted. This suggests that those who expect to need to transition to state regulation might prudently apply sooner, rather than later, in order to meet the Commission's proposed deadline of October 19 to withdraw from federal regulation. HOWEVER, applying to the state early (e.g., in January 2011) brings up the spectre of being regulated by both the Commission and the State until at least July 11 2011. This is an unacceptable situation, as federal and state regulations are sometimes at odds. How does one meet mandates of one regulatory entity that are at odds with mandates of another regulatory entity? Perhaps this temporary dual-registration issue could be dealt with by the Commission stating that it wouldn't take regulatory action on dually registered advisers (i.e., those registered with both the state and the SEC) during this period leading up to July 11 2011 and shortly thereafter? The Commission has already set a precedent for such a pragmatic policy by noting that it would not object to an IA who did not register with the SEC if, when filing their annual amendment in early 2011, they newly exceeded the $30M threshold, but did not exceed the new $100M threshold (*"To avoid such regulatory burdens, we will not object if any state-registered or newly registering adviser is not registered with us if..."*).

iii) It is not clear to us at this time whether our July 11 2011 AUM will qualify for SEC regulation or not. We expect to be close to the $100M threshold. Therefore, even if the "dual regulation" issue above didn't exist, it wouldn't necessarily be prudent for us to initiate state registration before July 11 2011. But if it did turn out to be required, we wouldn't know for certain until mid-2011, which would preclude us from applying very early -- in order to avoid problems with the short 60 day grace period as proposed.

iv) Even if our state application was a relatively simple one -- requiring few, if any, modifications after the state's initial review -- the state's extraordinary administrative burden associated with this transition suggests that it may take them a long time to get through all the applications. It would be wrong to penalize an IA by precluding them from being in business due to delays imposed by governmental entities which exceeded too-short deadlines imposed by other governmental entities (i.e., it would be wrong to preclude an IA from functioning, even temporarily, because the State application process took more than the allotted 60 days allotted by the Commission).

v) The Release noted that it may further be necessary for federal-covered IAs transitioning to state regulation to get their personnel registered with a state as Investment Adviser Representatives (IARs). We recently went through this process (i.e., of registering IARs with the state). It took about two weeks of dedicated study for the Series 65 Examination. This was followed by actually taking the exam. If the exam were failed, the applicant wouldn't be allowed to take the exam again for at least 30 days. Once the exam was passed, the application had to be submitted. According to our state's securities law, supposing that all required materials were satisfactorily submitted, the application automatically is considered approved 45 days after submission, unless the regulator takes action before then to notify the applicant of any problems therewith. We understand that our state was approximately 60 days behind in checking those applications. So, given the automatic 45-day approval in place in our state, and the two-week study required for the exam, it took almost exactly 60 days, in our case (which was the best case), to become certified as IARs. If the exam had been failed, it would have taken as many as 70 days, or longer. If 60 days is the best-case delay for going through the process of becoming an IAR, and a transition from federal to state registration may require this, it seems to us that this is "prima-facie" evidence that the proposed 60-day "grace period" is completely inadequate.

Again, we STRONGLY recommend extending the proposed 60 day grace period to the traditional 180 days. That should be adequate to avoid problems in virtually all cases.

2) **Rule 203A-1**

a) We applaud the Commission precluding the need for those state-regulated IAs who newly have between $30M and $100M in AUM from needing to register with the SEC. This is a common sense policy which reduces unwelcome and unnecessary administrative burden.

b) Previously, in order to preclude the necessity to switch too often between state and federal regulation, there was a $5M buffer: Below $25M was regulated by states and above $30M was regulated by the SEC. This buffer was useful in lessening the need to switch back and forth between state and federal regulation as an IA's AUM grew or fell (as it is constantly doing, due to market fluctuations, gaining new clients, and losing existing clients).

The Release proposes to eliminate the buffer, but just require that the transition be made only when, at the time of the annual update, the IA's AUM crosses the $100M threshold. This proposal does, in fact, preclude the need to switch between state and SEC regulation any more than annually after the initial year. This is a very welcome feature. However, it would still be useful to further reduce the necessity of switching by continuing to have some sort of buffer. We suggest a $20M buffer (i.e., below $100M would require state regulation, above $120M would require SEC regulation, in between could be either). This, combined with the once a year "snapshot" should further reduce the need to transition from one to the other regulatory authority too frequently.

We chose the $20M figure as follows: The new $100M threshold is four times as large as the previous $25M threshold. In general, the principal factor driving changes to an IA's AUM is market changes. If the previous $5M buffer made sense for the previous $25M threshold (and we believe it did), then in order to have the same effect with a threshold four times as large, the buffer would need to be four times as large. Example: Previously, an IA with $30,000,001 of AUM would need to be registered with the SEC. They could suffer a reduction of up to 16.66% in AUM without having to transition to state regulation. Now, using our proposed $20M buffer, an IA with $120,000,001 in AUM would be required to be registered with the SEC. They could similarly suffer a reduction of up to 16.66% in AUM without having to transition to state regulation.

Anything the Commission can do to lessen the need to incur unnecessary administrative burden by IAs would be extremely welcome. The administrative burden associated with transitioning from state to SEC regulation, or from SEC to state regulation is quite non-trivial. Further, this transition between regulatory authorities does nothing to enhance protection of the consumer. It is a pure administrative burden which we urge the Commission to do what it can to minimize.

If you have any questions whatsoever about anything, feel free to contact us.

Sincerely,

Eric E. Haas, MBA, MS
Member
Altruist Financial Advisors LLC