

**MEMO# 5304**

November 5, 1993

# **PROPOSED NASAA AMENDMENTS TO FORM ADV RELATING TO WRAP FEE DISCLOSURES**

November 5, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 33-93 SEC RULES COMMITTEE NO. 100-93 RE: PROPOSED NASAA AMENDMENTS TO FORM ADV RELATING TO WRAP FEE DISCLOSURES \_\_\_\_\_ The Board of Directors of the North American Securities Administrators Association ("NASAA") has issued for comment proposed revisions to Form ADV and the instructions thereto, as well as proposed revisions to Rule 203(b)-2 of the NASAA Model Amendments to the Uniform Securities Act. These revisions were developed by the NASAA Financial Planners/Investment Advisers Committee to define the disclosures which should be made to investors by sponsors of wrap fee programs. It is our understanding that these revisions were prepared jointly with the staff of the Securities and Exchange Commission ("SEC"). The SEC is expected to propose similar revisions for public comment. A copy of these proposed revisions is attached. Revisions to the Form ADV As proposed by NASAA, the Form ADV would be amended to add a new Schedule H. Schedule H must be completed by investment advisers in connection with any wrap fee program in which the adviser is a participant or sponsor. Unlike the other Schedules to the Form ADV, Schedule H is not designed as a form to be completed by the adviser; but rather, it lists information which must be presented by an adviser in a separate brochure. A copy of this brochure must be filed with the SEC and the jurisdictions in which the adviser seeks registration. It also must be provided to clients of the adviser's wrap fee programs in lieu of Part II of the Form ADV. If there are multiple sponsors to a single wrap fee program, Schedule H need only be completed by one such sponsor, which sponsor shall be chosen by the multiple sponsors. Contents of the Brochure Item 8 of Schedule H lists the contents of the brochure which must accompany Schedule H. According to Item 8, the brochure must include the sponsor's name, address, phone number along with a legend set forth in paragraph (a); detailed information on fees and costs (see paragraphs (b), (c), and (d)); an explanation of how the program's managers are selected and reviewed and the circumstances under which they will be replaced; information about verification of performance, or, if performance is not verified, a statement to that effect; a description of the client information provided to the portfolio manager; and, any restrictions on the ability of clients to contact and consult with portfolio managers. Advisers that sponsor or participate in mutual fund wrap fee programs are not required to include information on portfolio managers in their brochures, however they must explain how the adviser develops recommendations regarding the allocation of client assets among mutual funds. In addition to this information, the adviser must, in narrative form in the brochure, include certain specified information from Part II of the Form ADV. This information includes the items from Part II relating to: other business activities

and time spent thereon; other financial industry activities or affiliations; education and business standards and background; participation or interest in client transactions as a principal or as a broker or agent for a third party; conditions for managing an account; review of accounts; additional compensation; and, a balance sheet. While Schedule H does not require the information required thereby be presented in any specified format, "the brochure should not be organized in such a manner that important information . . . is obscured". Item 9 of Schedule H requires an adviser to specify the pages of the brochure on which the various disclosures required by each paragraph of Item 8 may be found. NASAA Rule 203(b)-2 Along with the revisions to the Form ADV, NASAA has proposed that the NASAA Model Amendments to the Uniform Securities Act be amended to add a new Rule 203(b)-2. This new rule, which includes definitions of "wrap fee program", "portfolio manager", and "sponsor", provides that sponsors of a wrap fee program provide disclosure to clients in accordance with the proposed amendments to the Form ADV. In addition to providing a copy of this disclosure to the state securities administrators, an adviser shall deliver the wrap fee disclosure statement to each client or prospective client not less than 48 hours prior to entering into a wrap fee agreement with the client, or at the time of entering into such agreement if the client has five days to terminate the contract without penalty. \* \* \* \* \* While NASAA has requested that comments on the proposed revisions be submitted by November 29, 1993, comments may be accepted up until the time these amendments are considered by the NASAA membership at their 1994 Spring Conference. If you have any comments on the proposed revisions amendments, please provide them to me by Friday November 19, 1993. My direct dial number is 202/955-8432. Tamara K. Cain  
Assistant Counsel Attachment