

A plain English Form ADV? How do I do that?

Lois Yurow
Investor Communications Services, LLC
(908) 518-0237 (v)
(908) 518-0247 (f)
lois@securitieseditor.com
www.securitieseditor.com

On July 21, 2010, the SEC [adopted amendments](#) to Form ADV and related rules to require investment advisers to offer disclosure in plain English. Under the revised rules, you can no longer use a “check the box, fill in the blank” format to provide information to your advisory clients and prospects. Instead, you must deliver a narrative brochure, in a prescribed format, to describe your business practices, fees, conflicts of interest, and disciplinary history. In addition, you must provide brochure supplements to introduce clients to the particular individuals in your organization who will provide services. The SEC believes the new requirements will “substantially improve the quality of the disclosure advisers provide to their clients.”

The amendments, initially proposed in March 2008, will become effective in fall 2010. If you have a December 31 (or later) fiscal year-end, you must comply with the new rules when you prepare your next annual updating amendment (i.e., before March 31, 2011, if you have a December 31 fiscal year-end). Consequently, now is the time to think about how to revise your client disclosure. The SEC is looking for some new pieces of information, but there is more to the amended rules than that: your entire discussion must be in plain English. That will probably require you to adopt a new approach to writing. On the bright side, while you may find the Form ADV amendments unwelcome and inconvenient, they will force you to elevate your firm’s disclosure style.

The trick to creating a plain English brochure, or any plain English document, is to be methodical. Do not expect that your first draft will be perfect, or that you can fix all the problems with one edit. Plan to read and revise your brochure several times. You will be more productive if you limit the number of things you look for in each reading.

What follows are drafting tips that you can apply to your Form ADV—and much of your other writing as well. There are short focused examples (all from real ADV’s) throughout the discussion to illustrate my points, and some longer “don’t let this happen to you” examples (also real) at the end.

Don’t procrastinate.

You might think plain English will be easier and faster to write than the complex legalese and financial jargon that often populates disclosure documents. That may be true when

you are revising a document that is already well-written and contains all the information you need, but it certainly is not true if you are starting from scratch (as you may be with some new disclosure items) or working with language that is vague, complicated, incomplete, or disorganized. It takes time and focus to identify and prioritize required (and otherwise useful) information and present it in a way that makes sense. It is never too early to start.

Pretend you think providing disclosure in plain English is a good idea.

Don't assume that your clients and prospective clients will ignore your brochure no matter what you do with it. If you adopt that attitude, you will strive for (and likely achieve) nothing more than the floor of legal compliance. Instead, start with the premise that clients would love to have the information you are required to give them, and are intelligent enough to understand it, if only you would make it convenient to read. Focus on the quality of your disclosure; don't settle for "legally adequate."

Decide how many brochures you will write.

If you offer a wide range of services to an even wider range of clients, a single brochure that meets all of your disclosure obligations could be unwieldy. The solution—sanctioned by the SEC—is to produce two or more brochures that are targeted to specific audiences. For example, you might have one brochure for your clients who invest only in the United States, and a second brochure for clients interested in opportunities around the world. Each brochure must contain the requisite information about your services and fees, but can omit information that would be irrelevant to the clients who receive it. As the SEC explains, a targeted brochure can be "shorter, clearer, and contain less extraneous information"—meaning closer to plain English—than a comprehensive brochure.

Speak the right language.

One of the best compliments a client has given me was not intended to be a compliment. A financial officer once told me that the way I explained a particular accounting concept in a 10-K was substantively correct, but that an accountant reading my explanation might not recognize it as an accounting concept at all. Great! The company's investors weren't

all accountants, so why should the 10-K use accountants' unique vocabulary? Use common words rather than industry jargon, businesspeak, and legalese.

Example

Original:

SGM offers portfolio management services for traditional separately managed accounts by utilizing individual security investments. SGM's approach is intended to be a low risk strategy with every opportunity to provide above-average rewards over a medium to long-term period. SGM takes a value approach to investing. SGM seeks investments in securities that are trading at significant discounts to SGM's appraised value of the business that they represent. Market anomalies exist around the globe and SGM intends to fully utilize its knowledge in foreign markets. However, the bulk of invested funds will remain in U.S. dollar securities as the absolute number and widespread diversification of American markets create many special situations.

Better:

SGM offers portfolio management services unique to each client in individual investment accounts. We select securities that, we believe, have the potential to generate above-average rewards over a period of ___ to ___ years without appreciable risk. To make those decisions, we appraise a range of public companies and identify those that are trading at significantly less than our analysts think they are worth. This is known as value investing.

SGM evaluates companies worldwide, and we invest in foreign entities that meet our criteria. However, because of its size and scope, the U.S. market offers many good investment opportunities. Most of your assets will be invested domestically.

Use descriptive headers to provide a roadmap of the discussion.

Good headers will help you organize information and help readers find what they want. You are required to use the headers that Form ADV assigns to each item, but there is no reason you cannot add your own subheaders. Most of the required disclosure items have multiple subparts; use descriptive titles to make it clear which subpart you are addressing.

To make your headers most effective, restrict the text in each section to what the header says will be there. For example, if you have one set of fees for financial planning and another set for portfolio monitoring, do not discuss them together. Each topic deserves its own header and its own paragraph.

Give some context in an introductory sentence or two.

Since you need to cover several categories of information, give every section an introductory paragraph (or sentence) that explains what the section will discuss. Every paragraph should have either an introductory sentence or a sentence that eases the transition from the preceding paragraph. This is basic stuff, but it's often overlooked.

Use defined terms correctly.

Many writers assign a defined term (such as "Private Funds") to every special word or long phrase that they introduce, thinking they will use the term several times.

Unfortunately, it is not unusual for a defined term to appear once in a long document, never to be seen again. This frustrates readers who try to learn vocabulary that supposedly will be useful. (It also suggests that no one proofread the document before it was distributed.) If you don't need a defined term at least three times, strike it.

Conversely, if you intend to make frequent use of an unfamiliar phrase, explain it clearly the first time it comes up. Make your explanation conspicuous (indented, set off in a box, or in a distinctive font or color) so readers can find it again easily.

Avoid obvious definitions (XYZ Advisers, Inc. ("XYZ")), and by all means, don't define the same term twice, or in more than one way. I'm all for varying your language to keep things interesting, but the firm that started its Schedule F with "ABC & Associates, LLP (the "Firm," "Advisor," "We" or "ABC") provides" was a little too fancy!

Personalize it.

Use your firm name rather than "the Adviser" or "the Firm" or "the Applicant," especially if the firm name is short. (Trust me: the average client does not know why you are "the Applicant.") Some companies use personal pronouns ("We have adopted a strict code of ethics..."), but others are squeamish about that style. Whatever you decide, be consistent. Don't be "the Adviser" on page 3 and "ABC Advisers" on page 6.

Consider replacing “client” with “you” (“Your account will be credited...”).

Don’t include unnecessary detail and superfluous material.

The SEC does not like boilerplate disclosure, and it doesn’t help your clients either. Don’t try to make your brochure look like something one of your competitors might have written by discussing issues that aren’t relevant to your firm’s circumstances. You are required to respond to every item in Form ADV, but your response can simply state “This item is not applicable to our business.”

Similarly, the SEC warns against the “kitchen sink” approach: “The brochure should discuss only conflicts the adviser has or is reasonably likely to have, and practices in which it engages or is reasonably likely to engage.” If you are disclosing issues that are merely remote possibilities (thinking, perhaps, that it will buy you some protection), you are distracting clients from the things that are genuinely important (possibly diluting your protection). Indeed, the instructions to Form ADV state that “you [may] include information not required by an item . . . [but] you may not include so much additional information that the required information is obscured.”

On a smaller scale, distinguish critical data from unimportant details, and omit things that don’t need to be said.

Example

The custodian will deliver a quarterly account statement directly to the client or client’s independent representative showing all disbursements from the account. Clients are encouraged to review their account statements for accuracy. ~~BC will receive a duplicate copy of the statement that was delivered to the client.~~

In addition, don’t belabor the obvious.

Example

Original (I italicized text that I think is redundant):

The total assets under management are determined when the first Portfolio Management Contract is signed. The fee schedule is 1.5% to 2% of total assets under management per

year. Fees are due and payable *on the first day of the month that begins a new calendar quarter*. Fees are charged and drawn on the accounts on *January 1st, April 1st, July 1st, and October 1st of each year*. Fees are charged in quarterly increments of 25% of the total assets under management for the ending prior quarter balance.

For total assets under management in excess of \$500,000, fees are *discounted 25%* per year. The management fee schedule is *between 1.13% and 1.5% of total assets* under management per year for assets under management in excess of \$500,000.

Better:

The total assets under management are determined when the first Portfolio Management Contract is signed. The fee schedule generally is 1.5% to 2% of total assets under management per year, but fees are reduced to a range of 1.13% to 1.5% for assets in excess of \$500,000.

Fees are due and payable on the first day of each calendar quarter. The amount charged to your account will be 25% of the total annual fee based on assets under management on the last day of the previous calendar quarter.

Prefer the active voice.

Using the active voice rather than the passive voice is helpful for two reasons: it will be obvious who did what, and your sentences likely will be shorter.

Example

Original:

Many prepackaged forms and financial planning software packages are used to determine the client's current financial position, as well as to define and quantify long-term goals and objectives.

Once long-term financial and non-financial objectives have been defined and detailed, shorter-term, yearly, targeted objectives are derived.

Assets under management are then allocated to complement the overall objectives of the client. Assets are invested primarily in no load mutual funds.

Extensive tables, charts, and financial information are maintained in house, allowing the advisor to stay current with the various investment options and activities available for the client.

Better:

ABC uses many forms and financial planning software to determine each client's current financial position and to define and quantify long-term goals and objectives. Once we specify those long-term objectives (both financial and non-financial), we develop shorter-term, yearly, targeted objectives.

ABC allocates assets under management to complement each client's overall objectives. We invest primarily in no load mutual funds.

We maintain extensive tables, charts, and financial information in-house so our personnel have ready access to the various investment options and activities available to our clients.

Say everything just once.

One firm's ADV explains several times that decisions are made "based on the client's description of his/her primary investment objectives and needs and in recognition of the inherent risks of investing in the financial markets" and also that "with written notice clients can terminate these contracts at any time and receive a full pro-rata refund of unearned fees." Another firm twice explains how it handles aggregated orders and how clients who place restrictions on their accounts or direct the use of a particular broker may be unable to participate in aggregated orders as advantageously as clients who have granted the adviser complete discretion. The same firm also explains twice (in two consecutive paragraphs) that it has relied on soft dollar arrangements in the past but does not have any soft dollar relationships right now.

If a concept is relevant to several of your disclosure items, explain it thoroughly the first time it comes up. After that, refer briefly to the concept and state where your reader can find the more complete discussion. The revised rules expressly permit you to cross-reference "[i]f you have provided information in response to one item that is also responsive to another item."

Example

Original [these three sentences all say pretty much the same thing]:

BC provides portfolio management services, which may be described as giving continuous investment advice to a Client (or making investments for the client) based on the individual needs of the Client. Through this service, BC offers a highly customized and individualized investment program for Clients. A specific investment strategy and investment policy is crafted to focus on the specific Client's goals and objectives.

Better:

BC will review your specific financial needs and objectives, and use that information to develop a strategy that enables us to give you continuous and focused investment advice or to make investments on your behalf. [note that I also converted the original's "Client" to "you."]

Replace word strings and sentence strings with bullet lists.

There are three good reasons to look for opportunities to replace text with bullet lists:

- ◆ Bullets usually are short, and there will be space between each item, so your document will be easier on the eye;
- ◆ Each point will stand out; and
- ◆ You often can eliminate words.

There are several uses for bullet lists, but they are particularly good substitutes for word strings. I use the term "word string" to refer to a long sentence that lists several items separated by commas or semicolons.

Example

Original with word string:

There is no direct link between BC's participation in the program and the investment advice it gives to its Clients, although BC receives certain economic benefits through its participation in the program. These benefits include: receipt of duplicate Client statements and confirmations; research related products and tools; consulting services; access to a trading desk serving BC participants; access to block trading (which provides

the ability to aggregate securities transactions for execution and then allocate the appropriate shares to Clients' accounts); the ability to have advisory fees deducted directly from Clients' accounts; access to an electronic communications network for Client order entry and account information; access to mutual funds with no transaction fees and to certain institutional money managers; and discounts on compliance, marketing, technology, and practice management products or services provided to BC by third party vendors.

Better:

There is no direct link between BC's participation in the program and the investment advice we give our clients, although participation entitles BC to certain economic benefits, including:

- ◆ duplicate client statements and confirmations;
- ◆ research-related products and tools;
- ◆ consulting services;
- ◆ access to a trading desk serving BC clients;
- ◆ access to block trading (which enables us to aggregate securities transactions for execution and then allocate the appropriate shares to clients' accounts);
- ◆ a more efficient payment system for fees;
- ◆ access to an electronic communications network for client order entry and account information;
- ◆ access to cost-effective mutual funds and to certain institutional money managers; and
- ◆ discounts on compliance, marketing, technology, and practice management products or services provided to BC by third party vendors.

Bullet lists also can replace sentence strings. You usually create a "sentence string" when you are describing a multi-step process. You probably won't realize until you finish writing that you have started every sentence with the same two or three words.

Example

Original with sentence string:

There are no limits to the authority of the Advisor to choose a broker-dealer or to determine the commission rates charged. The Advisor has no obligation when selecting a broker-dealer to execute a particular transaction to seek competitive bids or the lowest commission cost to the client. The Advisor determines that the products, services and prices provided by the broker-dealer are reasonable relative to those charged by typical securities firms. The Advisor uses reasonable efforts to cause transactions to be executed at a discount to standard retail rates. The Advisor determines that the commission rate charged is reasonable in relation to the total quality and reliability of the brokerage, research and custodial services made available to the Advisor for the benefit of the clients of the Advisor.

Better:

In choosing a broker-dealer or negotiating commission rates, the Advisor:

- ◆ has no obligation to seek competitive bids or the lowest commission cost to the client;
- ◆ uses reasonable efforts to cause transactions to be executed at a discount to standard retail rates;
- ◆ determines that the products, services, and prices provided by a broker-dealer are reasonable relative to those charged by typical securities firms; and
- ◆ determines that the commission rate charged is reasonable in relation to the total quality and reliability of the brokerage, research, and custodial services made available to the Advisor.

Once you have your bullet lists, make sure the language is consistent. Don't start one bullet with a verb and the next with a noun.

Make sure your explanation follows a logical sequence.

Think carefully about what readers need to know, and in what order. (Notice that I reordered the information in the above example to something that I think makes more sense than the original.) For instance, when you describe your fees, the best order might be:

1. overall percentage that you charge;
2. what day you calculate the fee owed;
3. what day's assets under management you use to calculate the fee;
4. what day the fee is taken from each account; and
5. whether clients are paying in advance or in arrears.

After you describe the basic arrangement, then you can discuss what you do about prorating fees or negotiating different terms.

Make sure each piece of information is easy to find.

Your headers are snappy and descriptive. Your opening sentences tell the reader where you are going. Don't let it fall apart in the meat of your discussion by packing too much information into a single sentence.

Examples

Original:

Although ABC is typically responsible for directing trades to brokers or dealers that it believes are capable of providing best price and execution, trades for asset-based wrap fee accounts which cover trades executed by a broker-dealer Sponsor or a broker-dealer affiliate of the Sponsor are generally executed by the Sponsor or its affiliate so that the Client is not charged commissions on the trades, as would be the case if the trades were directed to other broker-dealers for execution.

Better:

ABC typically directs trades to brokers or dealers that it believes are capable of providing best price and execution. However, trades for asset-based wrap fee accounts, including trades executed by a broker-dealer Sponsor or a broker-dealer affiliate of the Sponsor, generally are executed so that the client is not charged a commission. If these trades were directed to other broker-dealers for execution, the client would incur a commission.

Original:

SG Management offers two value investment objectives: the Value Equity Portfolio (includes both foreign and domestic equities) and the Water Sector Portfolio (Companies

whose primary revenues and growth derive from some aspect of the global potable water industry: Water supply, pumps and pipes, machinery and equipment, filtration and purification, compliance and testing, utilities, metering and distribution, construction and engineering, and wastewater treatment and recycling.)

Better:

SG Management offers two value investment portfolios: the Value Equity Portfolio and the Water Sector Portfolio. The Value Equity Portfolio includes both foreign and domestic equities. The Water Sector Portfolio focuses on companies whose primary revenues and growth derive from some aspect of the global potable water industry, such as water supply, pumps and pipes, machinery and equipment, filtration and purification, compliance and testing, utilities, metering and distribution, construction and engineering, and wastewater treatment and recycling.

Be direct.

Read your document critically. If it contains a lot of hedge words and vague language, readers will be forgiven for thinking the drafter either did not understand what the firm wanted to say, did not know how to say it clearly, or intentionally avoided making an unequivocal statement.

Most of the time, the problem is lack of knowledge. The solution is to find someone who thoroughly understands the issue, and ask plenty of questions. Then translate what you learned into a logical, orderly explanation that gives readers specific, useful information, including any background or definitions they may need.

If you are working with language that is intentionally vague, find out why and see if there is a responsible way to be more forthright. Face it: If your words are susceptible to more than one meaning, readers will select the one that is the least favorable (unless they sue, and then they will argue that they believed the “best case” interpretation). If your words are too elusive to be interpreted at all, prospective clients may look elsewhere for advisory services.

Eliminate extraneous words.

Your brochure should be in pretty good shape by now. As you read it cover to cover (yes, again!), keep looking for ways to clean it up. Chances are you will find thoughts or whole sentences that appear more than once—especially if different people wrote different sections. You certainly will find words or phrases that were written in the haste to create a working draft that really don't need to be there.

Examples

Managed accounts are monitored on a systematic basis, and each account is reviewed at least annually by a designated principal of the firm. ~~Notwithstanding the above,~~ more active accounts and larger accounts may be reviewed more often.

Clients purchasing this service will receive a written financial plan ~~which provides the client with a detailed financial plan~~ designed to achieve their stated financial goals and objectives.

~~In cases where SGM is retained under a so-called “wrap-fee” arrangement, the client should realize that~~ SGM does not negotiate the brokerage commissions for ~~the execution of~~ transactions in the client's account.

Make sure your language is consistent throughout.

Don't switch from a conversational tone to a formal or legal tone. If you need to quote directly from a legal document, make it clear that you are quoting. If you don't need a direct quote, then paraphrase—but in plain English.

A good tip-off that you are quoting is the word “shall.” I have seen several ADVs in which sentences like this pop up during otherwise conversational paragraphs: “This agreement shall remain in full force and effect until terminated by either the client or the advisor.” The transition is jarring for a reader.

Don't turn your verbs into nouns.

Turning perfectly good verbs into nouns (called “nominalization”) will make your sentences less interesting, and usually longer.

Example

Original:

Services may include the Adviser's *collection of* financial data, *development of* income and net worth statements, estate analysis, estate tax calculations, income tax analysis, investment analysis, and *preparation of* a formal financial plan.

Better:

The Adviser's services may include collecting financial data; developing income and net worth statements; analyzing your estate, estate taxes, income taxes, or investments; and preparing a formal financial plan.

Correct your grammar.

Once you put all that work into drafting your brochure, it would be a shame if you failed to notice and correct a grammatical error. Here are some common problems.

Examples

Clients receive statements from the custodian who holds the account. [*The custodian is not a person, so "who" should be "that."*]

The advisor manages assets for their own account. [*The advisor is a single entity, so "their" should be "its."*]

MF will assist clients in choosing an appropriate program based on the client's individual goals and to accomplish the client's investment objectives. [*The two underlined phrases should agree, and they don't. The easy fix is to replace the words "and to accomplish" with "to pursue" so you get "...based on the client's individual goals to pursue..."*]

SG will then continuously monitor each client's portfolio and when deemed appropriate by the client will either make changes or recommend changes in both asset class allocations as well as specific security selections. [*It is redundant to say "both" and "as well as" in the same sentence. Change "as well as" to "and" so you get "...changes in both asset class allocations and specific security selections."*]

Adjust your layout.

A plain English document uses white space, decent margins, and short focused paragraphs. Our eyes and our brains need visual interest and regular breaks.

Print out your draft brochure and flip through the pages. Does it look like something you would want to read, or is it intimidating? Here are some things to consider:

- ◆ If you have blocks of right-justified text, convert your document to “align left,” which will give you a solid left margin but a jagged right margin (like this paper).
- ◆ If you have a paragraph that runs more than half a page, try to break it into two smaller paragraphs, or see if there is text that can be converted into a bullet list.
- ◆ If the descriptive headers you wrote are not jumping off the page, play with the font (make it larger or darker) and the placement (center them, or increase the white space above and below).
- ◆ If you consistently have more than 15 or 20 words across a single line of text, consider enlarging your font or your side margins.

You may end up with a longer brochure than you anticipated, but your readers will appreciate it.

Get an outside opinion—perhaps two or three.

Ask someone from outside the firm (preferably not one of your attorneys) to critique your brochure. You may think that everything is clear because you know the firm’s history, the industry vocabulary, and the nuances of your strategies. An outsider can read a passage and give you a logical interpretation that may be absolutely wrong, ask questions that show where the holes are in your story, and point out sentences that are sure to cause eyes to glaze over. My clients are always surprised when I highlight things that insiders think are perfectly plain but that actually are unintelligible to the rest of us.

After you revise the brochure based on the outsider’s comments about content and clarity, give the document to a second person (and even a third) for basic proofreading. Ask the proofreader to look for:

- ◆ Extraneous words (these may occur when you write, or you may have forgotten to delete something when you edited);
- ◆ Real words (so they won't jump out at you as errors) that aren't the right word (say, "valve" rather than "value");
- ◆ Repetition ("Also, the Advisor also....");
- ◆ Sentences that are too long and should be broken into two or three;
- ◆ Inconsistent usage (you are "XYZ Advisors" in one paragraph and "the Firm" in another);
- ◆ Awkward transitions between paragraphs that could be fixed by adding subheaders or better opening sentences;
- ◆ Incorrect cross references (for example, you changed a header, but forgot to change a cross-reference to that section); and
- ◆ Unnecessary defined terms.

These longer examples will tie together many of tips you just read.

Original

When recommending a broker/dealer, BC will attempt to minimize the total cost for all brokerage services paid by the Client. It may be the case that the recommended broker charges a higher fee than another broker charges for a particular type of service, such as commission rates. Clients may utilize the broker/dealer of their choice; and they have no obligation to purchase or sell securities through such broker as BC recommends. BC has adopted a policy on selecting brokers and dealers which requires that “best execution,” adherence to fiduciary duty and compliance with the law are paramount considerations in selecting a broker or dealer to effect transactions for Client accounts. BC must seek to obtain “best execution” which means BC must evaluate the total cost (in purchasing a security) or highest total proceeds (in selling a security), taking into account the circumstances of the transaction and the reputability and reliability of the executing broker or dealer among other things. Best execution does not necessarily mean the lowest cost, therefore BC considers all factors that it deems relevant to the broker’s or dealer’s execution capability, including, for example, price, the size of the transaction, the nature of the market for the security, the amount of the commission, the timing of the transaction in light of market prices and trends, the reputation, experience and financial stability of the broker or dealer, and the quality of service rendered by the broker or dealer in other transactions.

Major problems:

- ◆ Large block of text.
- ◆ Poorly organized and repetitive.
- ◆ The definition of “best execution” is buried.
- ◆ Impersonal (written by “BC” for “Client”).
- ◆ Two verbs (adhere and comply) were turned into nouns.

Solutions:

- ◆ Eliminate the repetition and place the remaining information in a logical order.
- ◆ Break the text into several digestible paragraphs.

- ◆ Use personal pronouns (“we” and “you”).

Better

Clients may utilize the broker/dealer of their choice. We will make recommendations, but you have no obligation to execute trades through our recommended broker/dealers.

We look at many things when we select brokers and dealers. We attempt to minimize the total cost for all brokerage services paid by our clients, but the broker/dealers we recommend may not offer the lowest fees or commission rates available. Instead, we focus on obtaining “best execution.”

Best execution does not necessarily mean the lowest fee. Rather, it means the best total cost (in purchasing a security) or highest total proceeds (in selling a security), taking into account several factors, such as:

- ◆ the reputation, reliability, execution capability, experience, and financial stability of the executing broker or dealer;
- ◆ the price of the security;
- ◆ the size of the transaction;
- ◆ the nature of the market for the security;
- ◆ the commission amount;
- ◆ the timing of the transaction in light of market prices and trends; and
- ◆ the quality of service rendered by the broker or dealer in other transactions.

We also require broker/dealers that effect transactions for our client accounts to adhere to their fiduciary responsibilities and to comply with all applicable laws.

Original

ABC may act as investment manager to numerous accounts. ABC may give advice and take action with respect to any Client account or for its own account, or the account of its officers, directors, employees, members or agents, that may differ from action taken by ABC on behalf of other accounts. ABC is not obligated to recommend, buy or sell, or to refrain from recommending, buying or selling any security that ABC or its officers, directors, employees, members or agents, may buy or sell, directly or indirectly, for its or their own accounts or for any other account ABC manages. ABC is not obligated to refrain from investing in securities held in the accounts it manages except to the extent that such investments violate the Code of Ethics adopted by ABC.

From time to time, access persons of ABC or its affiliate may have interests in securities owned by or recommended to Clients. ABC may purchase or sell for its advisory accounts securities of an issuer in which ABC, its affiliate or their access persons also have a position or interest. As these situations may represent a potential conflict of interest, ABC has implemented procedures relating to personal securities transactions and insider trading that are designed to prevent actual conflicts of interest.

Major problem:

- ◆ The focus of the disclosure (potential conflicts of interest and how they are managed) is lost in a sea of (repetitive) words.

Solutions:

- ◆ Trim the language.
- ◆ Give concrete examples using personal pronouns to illustrate the point.

Better

We act as investment manager to numerous accounts, and the recommendations we make may differ from client to client. We may sell a security for your account at the same time we are buying the same security for another client.

Similarly, the actions we take with respect to ABC's own trading accounts, and the actions our officers, directors, employees, and other affiliates may take with respect their

personal trading accounts, may differ from the actions we take or recommend for our clients. We may purchase a security for your account at the same time one of our officers is selling the same security. These transactions may present a conflict of interest. However, ABC and its individual officers, directors, employees, and affiliates are free to make personal trades in securities that are held in the accounts we manage for clients unless such transactions violate our Code of Ethics. The Code of Ethics includes procedures relating to personal securities transactions and insider trading that are designed to prevent conflicts of interest.

Original

SGM has been retained as an investment manager under a number of wraparound fee or so called “Wrap-fee” arrangements sponsored by certain unaffiliated broker-dealers (the “Program Sponsors”). The list of Program Sponsors includes, but is not limited to: Salomon Smith Barney, B.C. Zeigler, FSC Securities, Lockwood Financial Services, PaineWebber and Pershing.

Under typical wrap-fee arrangements, the Program Sponsors may recommend that a client retain SGM as an investment advisor, pay SGM’s advisory fee on behalf of the client, monitor and evaluate SGM’s performance, execute the client’s portfolio transactions without commission charges, and provide custodial services for the client’s assets. All of these services are generally provided for a single fee paid by the client to the Program Sponsor.

In cases where SGM is retained under a so-called “wrap-fee” arrangement, the client should realize that SGM does not negotiate the brokerage commissions for the execution of transactions in the client’s account. Such commissions are usually included in the wrap-fee, along with fees for SGM’s investment advisory service, custodial services, performance monitoring performed by the broker-dealer, and other services.

In wrap-fee arrangements, trades are generally executed at the broker-dealer at which the account is held in custody and with which the client has entered the wrap-fee arrangement. In such cases SGM is not free to see the best price and execution for the client. Therefore, no assurance can be given that SGM will be able to obtain the best price or execution for clients whose accounts are subject to wrap-fee arrangements.

Clients who enter into wrap-fee arrangements should satisfy themselves that the broker-dealer offering the wrap fee arrangement is able to provide adequate price and execution of transactions. Clients who enter into wrap-fee arrangements should also be aware that the total fee charged by the broker-dealer (the single overall or “wrap” fee) may exceed the alternative total fees for brokerage, custody, and other services if the client were to negotiate such fees separately.

The annual fee paid by the client to the wrap-fee Program Sponsor will generally be in the range of 1%-3% of the client's assets under management. Under the sub-advisory agreement, the Program Sponsors pay SGM a fee for its advisory service, which usually ranges from 0.45%-1% of the assets managed by SGM.

In evaluating wrap-fee arrangements, clients should be aware that brokerage costs are not negotiated nor controlled by SGM. Transaction and custodial fees are generally included in the wrap-fee. SGM may execute transactions for wrap-fee clients through the Program Sponsor because the wrap-fee arrangement covers brokerage commissions effected through the Program Sponsor. SGM may be able to obtain superior execution for clients not in wrap-fee programs through other brokers, especially in foreign and non-listed securities. Therefore, clients in wrap-fee programs may be disadvantaged in some circumstances relative to other clients of SGM who are not in wrap-fee programs.

Major problems:

- ◆ The repetition makes the disclosure longer and more complicated than it needs to be.
- ◆ There may be times that you provide a list and you need to protect yourself by emphasizing that the list does not include every conceivable possibility (“including, but not limited to...”). I don't think offering the names of wrap arrangement sponsors is one of those times.

Solutions:

- ◆ Clean up the language (I reduced the disclosure by over 200 words without losing any useful content).
- ◆ Say everything once in a logical order.
- ◆ Use bullets to emphasize the important client considerations.

Better

SGM has been retained as an investment manager under a number of wraparound fee or so-called “wrap-fee” arrangements sponsored by unaffiliated broker-dealers, or “Program Sponsors.” We work with many Program Sponsors, including Salomon Smith Barney, B.C. Zeigler, FSC Securities, Lockwood Financial Services, PaineWebber, and Pershing.

Under a typical wrap-fee arrangement, the client pays a single fee to the Program Sponsor. In exchange for that fee, the Program Sponsor recommends that the client retain SGM as an investment advisor, pays our advisory fee on behalf of the client, monitors and evaluates our performance, executes the client's portfolio transactions without commission charges, and provides custodial services for the client's assets. Because the Program Sponsor bundles these services together, we do not negotiate the brokerage commissions for transactions in the client's account, nor can we guarantee that wrap-fee clients will receive the best price or best execution.

The annual fee to a wrap-fee Program Sponsor generally will range from 1% to 3% of assets under management. As a sub-advisor, SGM typically receives between 0.45% and 1% of the assets we manage.

If you are considering a wrap-fee arrangement with SGM as sub-advisor, you should understand these points:

- ◆ It is your responsibility to confirm that the Program Sponsor is able to provide adequate pricing and execution of transactions.
- ◆ The fee charged by the Program Sponsor may exceed the fees you would have paid for brokerage, custody, and other services if you were to negotiate such fees separately.
- ◆ Because we may be able to obtain superior execution from other brokers for clients who are not in wrap-fee programs, our other clients may get better results in certain circumstances (particularly in transactions involving foreign and non-listed securities) than you do.