

withdrawn, cancelled or revoked after the end of the fiscal year.

(b) An investment adviser required to file a report on Form ADV-B pursuant to paragraph (a) of this section shall furnish such report for its most recently completed fiscal year:

(1) No later than 60 days after the end of each fiscal year, to each advisory client over whose account the investment adviser exercises brokerage discretion; and

(2) No later than the time that a written or oral investment advisory contract is entered into, to each new or prospective advisory client over whose account the investment adviser will or proposes to exercise brokerage discretion.

(c) For purposes of this section:

(1)(i) An investment adviser exercises "brokerage discretion" over a client's account if it:

(A) Has authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client; or

(B) Significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client.

(ii) An investment adviser does not exercise brokerage discretion over a client's account if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the investment adviser; and

(2) Execution services mean those services set forth in paragraph (e)(3)(C) of Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(3)(C)).

#### PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 is amended by adding the following citation:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

Section 275.204-4 is also issued under 15 U.S.C. 78bb(e)(2).

4. By adding § 279.9 and Form ADV-B to read as follows:

##### § 279.9 Form ADV-B, annual report on investment adviser's brokerage direction practices.

This form shall be filed annually by an investment adviser, registered or required to be registered under the Investment Advisers Act of 1940, that has the authority to select brokers to execute the transactions of any client

and that obtains services other than execution from a broker to which it directs client brokerage.

**Note:** Form ADV-B is attached as Appendix 1 to this document. The Form will not appear in the Code of Federal Regulations.

Dated: February 14, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

#### Appendix 1

OMB Approval

OMB Number:

Expires:

Estimated average burden hours per response:

U.S. Securities and Exchange Commission,  
Washington, DC 20549

#### Form ADV-B

Annual Report on Brokerage Practices for Registered Investment Advisers Having Discretion Over Client Brokerage

Applicant: \_\_\_\_\_

SEC File Number: 801- \_\_\_\_\_

Date: \_\_\_\_\_

MM/DD/YY

#### General Instructions for Preparing and Filing Form ADV-B

1. Applicability of Form Requirement. A report on Form ADV-B must be prepared and filed by every investment adviser that (i) was registered or required to be registered under the Investment Advisers Act of 1940 on the last day of its most recently completed fiscal year (unless the adviser's registration has since been withdrawn, cancelled or revoked), (ii) exercised "brokerage discretion" over the account of any advisory client during that fiscal year, and (iii) obtained services other than "execution services" from a broker to which it directed client brokerage during that fiscal year.

2. Definitions.

**Brokerage Discretion.** An investment adviser exercises brokerage discretion over a client's account if it (i) has the authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client, or (ii) significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client. An investment adviser does not have discretion over a client's account, however, if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the adviser, even if the adviser has the discretion to direct certain of the client's transactions to other brokers.

**Execution Services.** Execution services mean those services described in Section 28(e)(2)(C) of the Securities Exchange Act of 1934, *i.e.*, effecting securities transactions and performing functions incidental thereto or required in connection therewith by rules

of the Securities and Exchange Commission or a self-regulatory organization.

3. Format and Filing of Report. The report required by this form should be prepared as a separate document, not on copies of this Form. The report shall be filed in triplicate with the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Each copy of the report filed with the Commission should be attached to a completed copy of this page, although only one such copy need be manually executed. The report shall be filed no later than 60 days after the end of the adviser's fiscal year.

**Execution:** The undersigned represents that he or she has executed this form on behalf of, and with the authority of, said investment adviser. The undersigned and the investment adviser represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

(Name of registrant)

By: \_\_\_\_\_

(Signature and title)

4. Delivery.

Existing Clients. Rule 204-4 under the Investment Advisers Act of 1940 requires that the report be furnished no later than 60 days after the end of the investment adviser's most recently completed fiscal year to each advisory client over whose account the adviser exercises brokerage discretion (as defined in Instruction 2 above).

Prospective Clients. Rule 204-4 also requires that the report be furnished no later than the time that a written or oral investment advisory contract is entered into to each new or prospective advisory client over whose account the adviser will or proposes to exercise brokerage discretion.

5. Period of Required Data. An investment adviser must provide the requested information for its most recently completed fiscal year. Brokerage commissions directed or services received during a fiscal year should be included in the table, even if the services corresponding to commissions directed during the fiscal year were or will be received during another fiscal year, or the commissions corresponding to services received during the fiscal year were or will be directed during another fiscal year.

6. Additional Information. An investment adviser may, in addition to providing the required information, provide other information, including additional data and explanations of the required information, about its brokerage practices in its response to this Form.

#### Information Required in Annual Report

##### Item 1. General Description of Report

In an introduction to the report:

(a) explain that the report contains information about the adviser's practices in selecting brokers to execute transactions for its investment advisory clients that can be used to evaluate whether the adviser directs