

The Commission believes that Congress intended to exclude from Commission registration most advisers that do not engage in traditional ongoing portfolio management, including most financial planners and consultants. Under the proposed instructions, a financial planner that merely undertakes to monitor the markets and advise its clients as to the advisability of changes to their portfolios would not be providing continuous and regular management or supervisory services.-[34]- A financial planner that otherwise would be regulated by the states could not "opt" to be regulated by the Commission by revising its financial planning agreements to include the statutory language or similar language unless such a revision materially changes the nature of the services being provided.-[35]-

## -----FOOTNOTES-----

-[33]- (...continued)

contacts with clients would not necessarily determine whether the adviser provides continuous and regular supervisory or management services.

-[34]- To enable the Commission to evaluate the claims of advisers relying on the non-discretionary management of assets as the basis of eligibility to remain registered with the Commission, proposed Form ADV-T would require these advisers to append a written statement explaining the nature of the non-discretionary supervisory or management services. See Part III, Item (c) of proposed Form ADV-T.

-[35]- The Commission is concerned that, if financial planners were permitted to treat assets they "monitor" as assets under management and therefore remain registered with the Commission, the intent of Congress to reallocate regulatory responsibilities by making "almost 72 [percent] of Commission [investment adviser] registrants" subject primarily to state regulation would not be effected. See Senate Report at 4.