



February 10, 2020

***Via Electronic Mail***

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**RE: Proposed Commission Proposed Rule: Investment Adviser Advertisements; Compensation for Solicitations (Release No. IA-5407; File No. S7-21-19)**

Dear Secretary Countryman:

Thank you for the opportunity to comment on the SEC's proposal related to investment adviser advertisements and compensation for solicitations. The comments and recommendations included in this letter were developed by the AICPA Personal Financial Planning Legislative and Regulatory Task Force. Our task force recognizes that this is a very complex landscape and commends your efforts in this area.

The AICPA is the world's largest member association representing the accounting profession, with more than 429,000 members in 143 countries, and has a history of serving the public interest since 1887. Approximately 120,000 AICPA members advise individual, family and business owner clients on personal financial planning matters including tax, estate, retirement, investments, and risk management while being committed to protecting the best interest of the public. The AICPA sets ethical and practice standards for the profession, offers specialized credentials including the Personal Financial Specialist credential, and drives professional competency development to advance the vitality, relevance and quality of the profession. The AICPA has a long-standing position of support for the principles-based regulatory approach of the Investment Advisers Act of 1940 and its related rules. This long-standing position places the public's interest at the forefront.

**The definition of "advertisements" should be clear and limited in scope**

As proposed, the rule is too broad and requires further clarification. The impact of including "...any communication, disseminated by any means....that seeks to obtain or retain one or more investment advisory clients..." with only four, distinct exceptions would put an unreasonable burden on investment advisers and would inadvertently cause many regular client communications to be unnecessarily considered as advertisements.

Further, the definition of advertisements lacks sufficient clarity. As written, the proposed rule says that investment adviser communications "may" be considered advertising "...depending on

facts and circumstances.” This statement is confusing and leaves too much open to interpretation. In 2018, the SEC warned investment advisers about the use of such language on Form ADV Part 2 when disclosing conflicts of interest, specifically stating that words like “may” are inadequate to meet the required disclosure obligations. We agree that the term “may” makes expectations unclear. A better solution would be to segregate the rules for communicating with clients and non-clients.

**Client and non-client communications should be differentiated**

Clients of the investment adviser already benefit from protection through existing federal securities laws. It is not beneficial to impose additional advertising restrictions applicable to communications to clients. As such, we believe that communications to existing investors should be treated differently than communications to prospective investors.

**The review and approval of advertisements should be consistent with other compliance rules**

We are in favor of allowing the chief compliance officer to self-review, which would allow small and sole-person advisers to comply with the advertising requirements. We recognize and agree that it would be inappropriate, and in many cases not possible, for small or single person advisers to meet a requirement of having an additional person review and approve advertisements. We agree with IA-2204 which allows all firms, including small firms, to tailor their internal compliance programs to the nature and scope of their own business.

**Availability to Serve as a Resource**

We appreciate your consideration of these comments and welcome the opportunity to discuss these ideas further. Please feel free to reach out to Jean-Luc at (805) 963-7070 or Susan at (678) 290-3930.

Respectfully,



Jean-Luc Bourdon, CPA/PFS  
Chair, AICPA Personal Financial Planning Legislative and Regulatory Task Force



Susan Tillery, CPA/PFS  
Chair, AICPA Personal Financial Planning Executive Committee