NAPFA
THE NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS
8700 W. Bryn Marw Avenue, Suite 700
Chicago, Illinois 60631
P: 847.483.5400 F: 847.483.5400
E: info@napfa.org

February 10, 2020

Ms. Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Submitted via rule-comments@sec.gov

Re: File Number S7-21-19
Investment Adviser Advertisements; Compensation for Solicitations

Dear Madam Secretary:

The National Association of Personal Financial Advisors ("NAPFA"), the nation's leading professional association of Fee-Only financial advisors with more than 3,800 member practitioners across the United States, appreciates this opportunity to comment on SEC Release No. IA-5407, "Investment Adviser Advertisements; Compensation for Solicitations" (November 4, 2019) (the "Proposing Release"), in which the Securities and Exchange Commission ("Commission" or "SEC") proposes certain amendments to (i) Rule 206(4)-1 (the "Advertising Rule") and (ii) Rule 206(4)-3 (the "Solicitation Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act").[1]

1. Perspectives on the Proposing Release

The proposed amendments to the Advertising Rule seek to address market developments since its adoption by the SEC in 1961. The proposed amendments to the Solicitation Rule seek to expand coverage to reflect both regulatory changes and the evolution of industry practices since the SEC adopted that rule in 1979. Finally, the Commission also proposes (i) amendments to Form ADV designed to provide additional information regarding an investment adviser's ("adviser") advertising practices, and (ii) amendments under the Advisers Act concerning books and records retention to correspond to proposed changes to the Advertising Rule and the Solicitation Rule.

NAPFA acknowledges that the current Advertising Rule and Solicitation Rule need to be revised and updated to provide advisers and NAPFA Members (defined below) improved regulatory guidance to respond to the rapidly evolving market for personalized investment advisory services. NAPFA commends the Commission and its Staff for addressing these issues and thoughtfully proposing a number of important reforms.

Although NAPFA generally supports the Commission's efforts to modernize both the Advertising Rule and the Solicitation Rule, we must emphasize that certain aspects of these proposals: (i) may trigger competitive disadvantages for NAPFA Members who render services to individuals and families in the marketplace for personalized investment advisory services; and, (ii) may unduly increase compliance

[1] The Commission is also proposing amendments to Form ADV that are designed to provide the Commission with additional information regarding advisers' advertising practices. Finally, the Commission is proposing amendments under the Advisers Act to the books and records rule, to correspond to the proposed changes to the advertising and solicitation rules.

burdens and costs for advisers and NAPFA Members, in particular those with fewer clients or who serve primarily "Retail Persons" as defined in the Proposing Release. Accordingly, we request that the Commission evaluate these proposals, and the public comments submitted in connection with this rulemaking, in light of those factors. We encourage the Commission to promulgate final rules that minimize anticompetitive effects and unnecessary compliance burdens and costs for advisers who participate in the marketplace for personalized investment advisory services.

2. About NAPFA and NAPFA Members

Our comments on the Proposing Release reflect important characteristics that distinguish NAPFA-affiliated financial professionals ("NAPFA Members") from other financial professionals who serve the public and, in particular, Main Street investors. Several of these important distinguishing characteristics are described as follows.

To minimize potential conflicts of interest between an adviser and the client, each NAPFA Member must adhere to a Fee-Only compensation standard. Thus, each NAPFA Member is prohibited from receiving commissions, discounts or other sales incentives resulting from a client's purchase of financial products. Unlike other financial professionals, each NAPFA Member is required to clearly disclose in advance to the client the fee for the services provided.

Each NAPFA Member must at least annually sign and renew NAPFA's Fiduciary Oath and Code of Ethics requiring each NAPFA Member: (i) to always place the client's interests before the NAPFA Member's interests; and, (ii) to disclose any actual or potential conflict of interest prior to the client making a decision.

To ensure that each NAPFA Member demonstrates the professional competence and ability to provide comprehensive financial planning across a wide range of potential client needs, each candidate, prior to approval as a NAPFA Member, must submit to peer review and receive peer approval of examples of the candidate's financial planning work.

Because NAPFA endorses the CERTIFIED FINANCIAL PLANNER™ designation and the CFP® mark, all new NAPFA Members since 2012 must have the CFP® designation prior to approval as a NAPFA Member.[2]

To maintain a high level of professional awareness and competence, NAPFA requires each NAPFA Member to complete at least sixty (60) hours of continuing education every two years, the highest requirement in the industry.

Finally, NAPFA is governed by a volunteer Board of Directors representing financial planners from across the country and works closely with national organizations that promote the interests of American consumers, investors and retirement savers.[3]

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[2] Certified Financial Planner Board of Standards, Inc. (CFP Board) owns the CFP® certification mark, the CERTIFIED FINANCIAL PLANNER™ certification mark, and the CFP® certification mark (with plaque design) logo in the United States, which it authorizes use of by individuals who successfully complete CFP Board's initial and ongoing certification requirements.

[3] For example, since 2008 NAPFA has collaborated with two other national organizations representing the development and advancement of the financial planning profession -- the Certified Financial Planner Board of Standards (CFP Board) and the Financial Planning Association® (FPA®) – to form The Financial Planning Coalition ("Coalition"). Working together through the Coalition, NAPFA, CFP Board and FPA seek to educate policymakers about the financial planning profession, to advocate for policy measures that ensure financial planning services are delivered in the best interests of the public, and to enable the public to identify trustworthy financial advisers. *See*, http://financialplanningcoalition.com.

3. The Advertising Rule Proposal

A. Advertising Prohibitions Generally

NAPFA supports and endorses the Commission's adoption and application of "principles-based" advertising standards as critical safeguards for investors and the public. Generally, these advertising standards, as set forth in the Proposing Release, would prohibit the following misleading and abusive advertising practices: (i) making an untrue statement of a material fact, or omission of a material fact necessary to make the statement made, in light of the circumstances under which it was made, not misleading;[4] (ii) making a material claim or statement that is unsubstantiated;[5] (iii) making an untrue or misleading implication about, or causing an untrue or misleading inference to be reasonably likely to be drawn concerning, a material fact relating to the adviser;[6] (iv) discussing or implying any potential benefits connected with or resulting from the adviser's services or methods of operation without clear and prominent discussion of associated material risks or other limitations;[7] (v) referring to specific investment advice provided by the adviser that is not presented in a fair and balanced manner;[8] (vi) including or excluding performance results, or presenting performance time periods, in a manner that is not fair and balanced;[9] and (vii) being otherwise materially misleading. [10]

NAPFA believes that advertising and communications to investors and the public should always be thorough, truthful and not misleading. Accordingly, NAPFA encourages the Commission to apply heightened enforcement standards in this area to discourage and prevent misleading communications. We also note that the "principles-based" advertising standards proposed by the Commission are broadly consistent with NAPFA's Fiduciary Oath and Code of Ethics under which NAPFA Members strive always to provide accurate and complete material information to clients that is necessary to make informed client investment decisions.[11]

B. Proposed Definition of "Advertisement"

The Commission proposes to revise the definition of "advertisement" to respond to and reflect technological innovations and evolving financial industry marketing practices. Although NAPFA supports the expanded advertising definition described in the Proposing Release, we note that this will likely increase compliance and recordkeeping costs, particularly for advisers with fewer clients, and thus may have an unintentional, adverse impact on NAPFA Members.

The new definition would include "any communication, disseminated by any means, by or on behalf of an adviser, that offers or promotes investment advisory services or that seeks to obtain or retain advisory clients or investors in any pooled investment vehicle advised by the adviser." [12] In contrast, current Rule 206(4)-1(b) defines "advertisement," in part, to include "any notice, circular, letter or other written communication addressed to more than one person." The Proposing Release states that the expanded definition would "… replace the current rule that [an advertisement] be a 'written' communication or a

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[4] Proposed rule 206(4)-1(a)(1).

[5] Proposed rule 206(4)-1(a)(2).

[6] Proposed rule 206(4)-1(a)(3).

[7] Proposed rule 206(4)-1(a)(4).

[8] Proposed rule 206(4)-1(a)(5).

[9] Proposed rule 206(4)-1(a)(6).

[10] Proposed rule 206(4)-1(a)(7).

[11] NAPFA, Mission, Fiduciary Oath, and Code of Ethics, available at https://www.napfa.org/mission-and-fiduciary-oath.

[12] Proposed rule 206(4)-1(e)(1).

notice or other announcement 'by radio or television'… and would change the scope of the rule to encompass all promotional communications regardless of how they are disseminated…."[13]

The Commission's proposal would exclude from the definition of "advertisement" the following four general categories of client communications: (i) live oral communications that are not broadcast; (ii) responses to unsolicited requests for information other than performance results or hypothetical performance; (iii) advertisements, other sales material or sales literature about a registered investment company or a business development company regulated by the Commission; and, (iv) information required to be contained in a statutory or regulatory notice, filing or other communication.[14] NAPFA agrees that these four general categories should be excluded from the definition of "advertisement."

Under the current Advertising Rule, only oral communications broadcast "over the airwaves" on radio or television are deemed to be "advertisements." The proposed rule would extend the definition of advertisement to include all broadcast oral communications, including recorded webinars, social media and video blogs, all of which are used increasingly by NAPFA Members to communicate with their clients and prospective clients. Because NAPFA Members would be required under the Commission's books and records rules to maintain records of such communications, this would likely increase compliance costs and potentially place NAPFA Members, in particular those who are small or single-person advisers, at a competitive disadvantage to larger advisory firms.[15]

We also note that the proposed rule would include in the definition of "advertisement" an adviser's response to an unsolicited request from a Retail Person where the response contains performance results or hypothetical performance information.[16] It is not uncommon for a NAPFA Member to use projected returns in its financial planning process, either as part of an initial presentation or once a client has already engaged the services of the adviser. From time to time, NAPFA Members may also use software that analyzes a client's actual or proposed portfolio based on past market data and projects those returns forward. This can be a critical part of the financial planning process for advisers to determine whether a client is taking an appropriate level of risk in an effort to meet their objectives. As described in the Proposing Release, this part of the financial planning process, if shared with a client or prospect, could be treated as projected performance, and therefore subject to the additional conditions on advertisements containing hypothetical performance.[17] In an effort to avoid creating additional regulatory and compliance burdens for advisers, and to enable advisers to better assist Retail Persons with achieving their financial goals, we would propose excluding from the definition of advertisement certain one-on-one presentations that are based on mathematical modeling software created by third parties, such as Morningstar and Hidden Levers, where the adviser is relying primarily on historical performance of commonly accepted asset classes in an effort to project performance. While we acknowledge that past performance is not indicative of future results, relying on certain generally accepted returns for asset classes and applying them forward is one of the only ways to appreciate investing risk, and help Retail Persons determine what asset allocation is best suited for their corresponding goals, objectives, and risk tolerance. Absent an exception for these types of performance presentations, NAPFA Members, in particular those who are small or single-person advisers, will be subject to additional compliance requirements and recordkeeping costs and would be placed at a competitive disadvantage vis-à-vis larger advisory firms.

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[13] Proposing Release at p. 23.

[14] *See* proposed rule 206(4)-1(e)(1)(i)-(iv).

[15] Rule 204-2(g) requires a duplicate copy of any electronic record.

[16] *See* Proposing Release at p. 165 ("We generally would consider a target or projection to be any type of performance that an advertisement presents as results that could be achieved, are likely to be achieved, or may be achieved in the future by the investment adviser with respect to an investor.")

[17] *See* Proposing Release at pp 162-167.

C. Testimonials and Endorsements

The proposed Advertising Rule would define a "testimonial" as "any statement of a client's or investor's experience with the investment adviser or its advisory affiliates, as defined in the Form ADV Glossary of Terms."[18] The proposed Advertising Rule would define an "endorsement" as "any statement by a person other than a client or investor indicating approval, support, or recommendation of the investment adviser or its advisory affiliates, as defined in the Form ADV Glossary of Terms."[19]

As stated in the Proposing Release, "[t]estimonials and endorsements would both include, for example, opinions or statements by persons about the investment advisory expertise or capabilities of the adviser or its advisory affiliates."[20] However, to the extent that a statement does not cover either: (i) an investor's experience with the adviser or its advisory affiliates; or, (ii) a non-investor's approval, support or recommendation of the adviser or its advisory affiliates, the statement would not be treated as a testimonial or endorsement.[21] The proposed rule would permit the use of testimonials and endorsements, including dissemination on the internet and social media platforms, provided that such statements comply with the requirements of the proposed rule.

NAPFA generally supports the use of *uncompensated testimonials*; that is, testimonials made by current and former clients who do not receive any compensation from the adviser, its advisory affiliates or any third party, for making such statements. Uncompensated client testimonials and endorsements can reflect a client's actual, and presumably positive, experience with the adviser or its advisory affiliates, and also provide useful information to investors and the public. Because the client would receive no compensation, such statements would avoid the taint of "puffery" and personal bias.

NAPFA is deeply concerned about and opposes aspects of this proposal that would permit the use of any *compensated* endorsement or testimonial because of the high likelihood that such communications would be tainted by "puffery" and personal bias, and would provide misleading information and impressions, in particular to less financially sophisticated or less experienced investors and members of the public. NAPFA believes that *compensated* endorsements and testimonials, even though they would be subject to the general prohibitions in the proposed rule, would inadvertently result in great investor harm, exactly the opposite of the Commission's investor protection mandate, through an increase in misleading information and impressions being provided to clients and the public.

In addition, NAPFA is concerned that the rise of *compensated* endorsements and testimonials will provide disproportionate and unfair marketing advantages favoring larger investment advisory firms. For example, larger firms would be able to pay greater fees and salaries to those providing endorsements and testimonials. In addition, larger firms would have the ability to leverage their favorable testimonials and endorsements to broader market audiences than could smaller advisers, including many NAPFA Members. We urge the Commission, before approving a final rule, to thoroughly investigate and address the potential adverse, anticompetitive economic impact this proposal may have affecting providers and recipients in the market for retail investment advisory services.

[18] Proposed rule 206(4)-1(e)(15).

[19] Proposed rule 206(4)-1(2)(2).

[20] Proposing Release at p. 78.

[21] Proposing Release at p. 79.

D. Third Party Ratings

Concerning third-party ratings, the Commission seeks comment on whether or not advisers should be "… required to disclose the criteria upon which the rating was based, including for example: (i) assets under management; (ii) performance (both realized and unrealized); (iii) number of years in operation; or (iv) size of the adviser based on other metrics such as number of employees or number of offices…."[22]

Disclosure of rating information could be very useful to investors and the public when attempting to make "apples to apples" comparisons among advisers and their related persons, and would help individuals identify and select advisers possessing the business characteristics and financial planning expertise they seek. Accordingly, third-party ratings may provide advertising and marketing benefits to advisers and their related persons, including NAPFA Members, who choose to use them. However, certain conditions discussed in the Proposing Release will likely increase compliance burdens and costs for firms that choose to use them. For example, the proposed rule "… would require that the investment adviser reasonably believe that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result."[23] In addition, the Proposing Release seems to place new conditions on an adviser to monitor their continued use of third-party ratings in advertisements, which is an issue the Commission has not previously addressed.[24]

E. Performance Advertising and Disclosure

NAPFA supports the performance advertising disclosure standards in the Proposing Release that are intended to help the industry avoid issuing "false or misleading"[25] performance advertisements to the public. This disclosure generally must address: (i) the material conditions, objectives, and investment strategies used to obtain the results portrayed; (ii) whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings; (iii) the effect of material market or economic conditions on the results portrayed; (iv) the possibility of loss; and, (v) the material facts relevant to any comparison made to the results of an index or other benchmark.[26]

NAPFA agrees with the Commission's decision not to adopt a standardized disclosure or legend containing or requiring a specific disclosure in advertisements containing performance results. Although regulatory authorities sometimes require standardized boilerplate disclosures in certain circumstances, NAPFA believes that advisers and related persons should have the latitude and flexibility to tailor performance advertising disclosures that are most appropriate for, and best reflect, their individual business models.

NAPFA also agrees with the proposed amendments to Item 5 of Form ADV, Part 1 that would request information about whether any of the adviser's advertisements contain performance results, and if so, whether those results are verified by a person who is not a Related Person.[27] We believe that this is an important data point for both the SEC and the public to appropriately assess an adviser and their

[22] Proposing Release at p. 100.

[23] Proposing Release at p. 94.

[24] Proposing Release at p. 94 ("For example, where an adviser's advertisement references a recent rating and discloses the date, but its advisory business has sharply declined shortly thereafter, the advertisement would be misleading.") We are unaware of the criteria for determining whether an advisory business has sharply declined, and can only assume that this is referring to assets under management ("AUM").

[25] Proposing Release at p. 104.

[26] Id.

[27] *See* Proposing Release at pp. 197-98.

advertising practices.

F. Advertising Review and Approval Prior to Dissemination

The proposed rule would generally require an adviser to have each advertisement reviewed and approved by a designated employee prior to dissemination. The Proposing Release acknowledges that small and single-person advisers may not have separate personnel to create and review advertisements, and requests comment on potential approaches to the review process in these situations. NAPFA urges the Commission to include in the final rule an exception for small advisers from the advertisement approval requirement similar to the exception under Advisers Act Rule 204A-1(d).

Advisers Act Rule 204A-1 requires an adviser registered with the Commission, among other things, to require certain supervised persons to submit transaction and holding reports and seek pre-approval prior to investing in an initial public offering or in a limited offering. Rule 204A-1(d) provides an exception for small advisers that have only one access person from submitting reports to themselves or obtaining preapproval prior to investing in an initial public offering or in a limited offering so long as the adviser maintains records of their holdings and transactions otherwise required under the rule. Thus small advisers, including many NAPFA Members, could satisfy the advertisement approval requirement in the normal course of business while simultaneously complying with other Advisers Act recordkeeping requirements.

G. Hypothetical Performance

The Commission seeks comment on the use of hypothetical performance by advisers in advertisements. Because NAPFA Members provide personalized investment advice tailored to the specific financial goals and investment objectives of each client, NAPFA generally endorses the Commission's approach regarding the treatment of hypothetical performance as described in the proposed rule.

Most significantly, the proposed rule would impose significant new conditions on the use of hypothetical performance that would effectively prohibit their use in advertisements directed to a mass audience or intended for general circulation.[28]

The proposed rule's new requirements would include the following:

> First, the adviser must adopt and implement policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the financial situation and investment objectives of the person to whom the advertisement is disseminated (the "recipient"). Second, the adviser must provide sufficient information to enable the recipient to understand the criteria used and assumptions made in calculating such hypothetical performance (the "calculation information"). Third, the adviser must provide (or, when the recipient is a Non-Retail Person, offer to provide promptly) sufficient information to enable the recipient to understand the risks and limitations of using hypothetical performance in making investment decisions (the "risk information").[29]

By requiring that the adviser ensure that the investor "has the tools" to understand a presentation and, furthermore, requiring that the adviser provide a tailored, personalized presentation, the proposed rule is consistent with the goal of NAPFA Members to provide personalized investment advice tailored to each client.

[28] Proposing Release at p. 174.

[29] Proposing Release at p. 170.

4. The Solicitation Rule Proposal

NAPFA provides the following comments on the proposed amendments to the Solicitation Rule.

A. Compensation

The Commission's proposal would significantly expand the scope of the current Solicitation Rule. The proposed rule would apply the Solicitation Rule to cover all forms of compensation regardless of whether compensation is paid in cash or otherwise. As stated in the Commission's Press Release accompanying the Proposing Release,[30] non-cash compensation would include directed brokerage, awards or other prizes and free or discounted services.[31] In addition to the solicitation of current and prospective clients of an adviser, the proposed rule would also expand the current rule to cover the solicitation of current and prospective investors in private funds.[32]

The proposed rule would maintain the current rule's partial exemption for: (i) solicitors who refer investors for impersonal investment advice;[33] and, (ii) solicitors who are employees or otherwise affiliated with the adviser.[34] These partial exemptions, however, would no longer be subject to the current rule's written agreement requirement.

The proposed rule would create two new exemptions for: (i) de minimis compensation to solicitors,[35] and (ii) advisers who participate in certain nonprofit programs.[36] These new exemptions would benefit NAPFA Members who sometimes participate in less formal referral initiatives where they invite clients to special events or dinner. In other instances, NAPFA Members may make donations on behalf of clients who introduce them to prospective new clients ("prospects"). Tracking the proposed de minimis exemption would be difficult for, and impose undue compliance obligations on, NAPFA Members in these instances and would unnecessarily subject the adviser to the proposed Solicitation Rule.

The Commission also sought comment on: (i) whether or not some forms of non-cash compensation should be prohibited under the proposed rule, and, if so, why; and, (ii) whether or not there should be any cap on the amount of compensation paid to solicitors for referrals and, if so, what that cap should be. In this regard, NAPFA's Fiduciary Oath generally prohibits advisers from receiving referral fees. NAPFA believes that (i) the payment of cash for referrals and (ii) most non-cash referral or compensation arrangements present conflicts of interest that inherently lead to inappropriate investment advice. For example, directed brokerage for client referrals and sales awards paid by third parties are clear examples of practices that can inappropriately influence the investment recommendations made by financial professionals to their clients, and should be prohibited. No amount of disclosure of mitigating tactics can ensure that clients will receive appropriate advice. Further, any caps on the amount of compensation paid to solicitors should ensure that large advisers, who typically have the financial resources to make large

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[30] *See* SEC Proposes to Modernize the Advertising and Cash Solicitation Rules for Investment Advisers, SEC (Nov. 4, 2019), available at https://www.sec.gov/news/press-release/2019-230.

[31] Proposing Release at p. 209.

[32] Proposed rule 206(4)-3(c)(2)-(4).

[33] Proposed rule 206(4)-3(b)(1).

[34] Proposed rule 206(4)-3(b)(2); *see also* the Proposing Release at p 245 ("We propose to generally maintain the central elements of the current rule's partial exemption for affiliated solicitors: that the solicitor disclosure, adviser oversight and the detailed provisions of the written agreement are not required with respect to affiliated solicitors under certain conditions. We would generally continue the partial exemption, with some modifications, provided that the status of such solicitor as in-house or affiliated is disclosed to the investor at the time of the solicitation unless such relationship is readily apparent, and the adviser documents such solicitor's status at the time of entering into the solicitation arrangement.")

[35] Proposed rule 206(4)-3(b)(3).

[36] Proposed rule 206(4)-3(b)(4).

cash compensation payments, are not able to disproportionately benefit.

B. Delivery of Solicitor Disclosure

The Commission proposes to permit the solicitor disclosure statement to be delivered either at the time of solicitation or as soon as reasonably practical thereafter. The rationale given is that it may not be practical to deliver the solicitor disclosure at the time of the initial solicitation. NAPFA strongly disagrees with this proposal.

Under the NAPFA Fiduciary Oath and Code of Ethics,[37] NAPFA Members strive for transparency and the avoidance of actual and potential conflicts of interest when providing investment advice and financial planning services to their clients. Because of this, NAPFA is convinced that, to protect clients and prospects and to provide them with the material information necessary to make informed investment decisions, the solicitor disclosure must be provided at the time the solicitation is made, not when it is merely practical for the solicitor to do so. NAPFA opposes the proposed amendment because weakening the delivery requirement for the solicitors disclosure substantially reduces the value of the disclosure to clients and prospects and also significantly undermines the investor protections the Commission's rules otherwise provide.

C. Solicitor Disqualification and Disqualification Events

The proposed rule also restructures how persons would become disqualified from acting as a solicitor, and generally expands the categories of persons who are subject to disqualification.[38] NAPFA generally supports these proposed amendments. For example, NAPFA concurs with the statement in the Proposing Release that states: "[b]ecause a solicitor that is a firm engages in solicitation activities through its associated individuals, we believe that an individual's conduct should be subject to the rule's disqualification when the firm is disqualified."

The Commission also proposes that the time of solicitation, rather than the time the adviser compensates or engages the solicitor for solicitation, is the appropriate time to tie any disqualifying event or action to the solicitor's status as an ineligible solicitor.[39] NAPFA supports this proposed amendment because we firmly believe that bad actors should not stand to benefit after disqualifying events occur.

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NAPFA appreciates the opportunity to submit our comments on the Proposing Release. Should you have questions, feel free to contact me at your convenience.

Sincerely,

Geoffrey Brown, CAE
Chief Executive Officer

[37] NAPFA, Mission, Fiduciary Oath, and Code of Ethics, supra footnote 11.

[38] Proposed rule 206(4)-3(a)(3)(i) ("An investment adviser cannot compensate a solicitor, directly or indirectly, for any solicitation activity if the adviser knows, or, in the exercise of reasonable care, should have known, that the solicitor is an ineligible solicitor.")

[39] Proposed rule 206(4)-3(a)(1)(iii); *see also* the Proposing Release at pp. 266.