



February 10, 2020

Mr. Brent J. Fields  
Secretary  
United States Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

RE: Release No IA 5407; File No. S7-21-19 (Proposed advertising rule)

Dear Mr. Fields:

Thank you for this opportunity to offer comments on the proposed advertising rule as it regards endorsements and testimonials.

The SEC proposal to effectively lift the ban on testimonials and endorsements in advertisements is a bad idea. The reason is the rationale for the ban remains solid after decades. The SEC offers no new research or compelling analytical insights to refute the basis for the ban. Further, the SEC does not make a strong case that such advertising will help investors.

The SEC acknowledges the rationale for the ban made by the SEC in 1961, when the SEC states, “The Commission believes that this rule, foreclosing the use of advertisements which have a tendency to mislead or deceive clients ... is necessary.” In addition, that “Investment Advisers are professionals and should adhere to a stricter standard of conduct than that applicable to merchants.” Why? The SEC notes (in 1961) that securities, “are intricate merchandise,” and investors “frequently unskilled and unsophisticated in investment matters.”

The SEC seeks to overcome the rationale for this commonsense and well-known formulation. It suggests that changes since 1961 “Lead us to believe providing a more principles-based approach would be beneficial.” As examples of “changes”, the SEC cites advances in technology, the “profiles” of advice and consumer expectations.

For example, advances in technology have led to “significant growth in the nature and growth of information” available to investors, by allowing them to “access and share user reviews.” The current prohibition on testimonials limits how user reviews can be shared. This is true. The question is whether this means the prohibition on testimonials and endorsements remains generally a good thing – or not, for investors. On the issue of the “profiles” of advisers, the SEC points out that the way advisers and investors interact has also changed over the years. Today, digital platforms or “robos” have grown. This is also true and the question is also whether the ban on testimonials and endorsements remains a generally good idea -- or not, for investors.

When it comes to consumer expectations, the SEC points out “Consumers today often rely on the internet to obtain information when considering buying goods and services across the world, including advisory services and those of other financial professionals. Many websites allow potential buyers to compare and contrast the goods and services being offered, including through reviews and ratings provided by those who have previously bought the relevant goods and services. We believe that consumers’ ability to seek out reviews and other information, as well as their interest in doing so, when evaluating products and services has changed since the adoption of the current rule.”

Again, true enough. Again, the question today remains whether the explosion of information made available through the internet on “goods and services across the world” means whether the ban on testimonials and endorsements remains a generally good idea – or not, for investors.

The SEC suggests the overwhelming case for this advertising ban, is overcome, in part, by noting that the proposed rule requires ‘tailored disclosures and other safeguards.’ One safeguard? The requirement: ‘That the advertisement not imply something... that is reasonably likely to cause an untrue or misleading inference to be drawn concerning a material fact relating to an investment adviser.’ Broker-dealers have already held their brokers out as trusted advisors for many years in corporate advertising.

It is also noteworthy that the SEC does not mention or reference any evidence or research that the experience of consumer advertising in other professions such as lawyers, doctors or engineers benefits consumers of the services.

The SEC further argues for lifting the ban by noting that such advertisements are today widely used ‘for various consumer goods and services’. Then the SEC asserts that consumers ‘seek out and consider the views of others’ when making purchasing decisions, citing decisions that range ‘from purchasing a coffee-maker to finding the right medical expert.’

A coffee maker? It was Yankees great Joe DiMaggio who endorsed the Mr. Coffee brand and served as the company ‘pitchman’ for many years. He was famous, credible and apparently successful at selling coffee. In a 1978 advertisement, DiMaggio promises viewers: ‘Buy a Mr. Coffee now and I’ll send you a \$5 rebate check with my signature. With Mr. Coffee, you’ll be getting many years of great coffee.’

## **Conclusion**

Will testimonials and endorsements help investors choose a better investment adviser as they might a better coffee maker? Is choosing personalized financial or investment advice provided in trust and confidence from a fiduciary, like purchasing a restaurant meal or kitchen appliance? A coffee-maker pitchman might be great, but can he help an investor make good choices that can mean reaching her life goals? Choosing the right investment adviser can.

Ads inherently mislead and can blur important differences in 2020 as they did in 1961. There may be parts of the 1961 advertising rule that deserve updating. The ban on testimonials and endorsements is not one of them.

Sincerely,

*Knut A. Rostad*

Knut A. Rostad  
President