October 27, 2017

Via Electronic Mail

The Honorable Jay Clayton
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Request for Information on Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

We appreciate the opportunity to comment on the SEC's request for information related to the standards of conduct of broker-dealers and investment advisers as well as consideration of potential harmonization of certain other aspects of the regulation of broker-dealers and investment advisers.

The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 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 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.

AICPA members are required to maintain objectivity in fulfilling professional responsibilities and act in the best interest of their clients at all times when providing personal financial planning services, including investment management. These principles have no exception, and disclosure does not provide a way to allow for impaired objectivity resulting from a known conflict of interest.

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; and believes that those representing themselves as investment advisers to individual investors should be subject to an elevated standard of care so long as the standard is no less stringent than the standard currently applied to investment advisers under the Advisers Act. This long-standing position places the public's interest at the forefront, and should be applied across all accounts and advisers. The significant importance of competent, objective advice for individual investors cannot be overstated.

The comments and recommendations included in this letter were developed by the AICPA Personal Financial Planning Legislative and Regulatory Task Force.

A Consistent High Standard of Conduct Benefits the Public

We are concerned that the request for information could signal a move towards a redefined fiduciary standard that is less stringent than what currently applies to investment advisers under the Investment Advisers Act of 1940. The complexity of investing does not lend itself to an environment in which investors can quickly and easily evaluate an adviser's competence and prudence.

Consumers must increasingly place a high degree of reliance on financial advice but they are unclear about when an adviser is required to serve their best interest, particularly when the same person provides them with multiple services associated with different standards of care.[1] The AICPA is committed to serving the best interest of the public, which is the foundation of the fiduciary standard of care, and we

[1] *Report to Congressional Addressees*, GAO-11-235 (January 2011) "Consumer Finance: Regulatory Coverage Generally Exists for Financial Planners, but Consumer Protection Issues Remain" by the United States Government Accountability Office

believe that anyone representing themselves as offering investment advice to retail investors should be held to such a standard.

Objectivity is Imperative

Advice that consistently and reliably serves the best interest of consumers must be objective. Objectivity is a fundamental element of professional advice. A conflict of interest can entice advice providers to place their interests ahead of their clients'. When delivering advice to retail investors, all advisers should maintain objectivity and not be influenced by matters that could lead to delivering advice in a biased, partial or conflicted manner. As an example, the AICPA Code of Professional Conduct requires CPAs who provide advice be free of conflicts of interest that impair their objectivity.

Disclosure Alone is Not Enough

Transparency via disclosure is one of the many necessary elements that should be included in the principles for standard of care. However, disclosure should not be a gateway allowing for impaired objectivity resulting from a known conflict of interest. Conflict of interest disclosures do not lessen the financial incentive to act against the client's best interest, but they may serve to legally protect advisers from not acting in the client's best interest.

Consider the study, "The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest."[2] Findings in this report suggest that disclosure, while intended as a potential solution, "can increase the bias in advice because it leads advisers to feel morally licensed and strategically encouraged to exaggerate their advice even further." The investor, as cited by the study, does not "discount advice from biased advisers as much as they should, even when adviser's conflicts of interest are disclosed." Furthermore, disclosure can have the opposite effect and encourage or allow biased advice because advisers are led to feel disclosure is sufficient. A follow up study published in the Journal of Consumer Research stated that "the most effective antidote for the problems caused by conflicts of interest is not to disclose them but to eliminate them." [3]

Different Business Models Require Different Regulation

The SEC request for information indicates that a single standard of conduct *combined with* harmonizing rules and regulation is being considered which would apply to both broker-dealers and advisers. We urge you to consider the reality that two distinct and very dissimilar business models exist for meeting the needs of retail investors. The vast majority of our members who provide investment advice provide those services in an advisory capacity for a fee and are compensated for the advice they provide. Alternatively, there are advisers who provide access to financial products for a commission, which is a transactional business model. If broker/dealer regulation were to be imposed on registered investment advisers, it would bring a sales model perspective to investment adviser regulation. Its rules-based approach is not conducive to appropriate oversight of the investment advisory profession which should remain principles based. Harmonizing the rules for these two different business models as if they are the same is inappropriate and counterproductive to the best interest of the public. Such regulation would create unnecessary and costly regulatory burdens and unintended consequences.

Consumer Confusion Also Driven by Marketing and Misleading Titles

The numerous titles and designations that financial service providers use vary greatly in the expertise, training and standard of care that they represent, but consumers may not be able to distinguish among them. To avoid consumer confusion, any person or firm representing themselves as an investment adviser, or its equivalent, to retail investors should be required to act in the client's best interest as a fiduciary at all times.

[2] *Journal of Legal Studies*, Vol. 34 (January 2005) "The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest" by Daylian M. Cain, George Lowenstein and Don A. Moore.

[3] *Journal of Consumer Research*, Vol. 37 (February 2011) "When Sunlight Fails to Disinfect: Understanding the Perverse Effects of Disclosing Conflicts of Interest" by Daylian M. Cain, George Lowenstein and Don A. Moore.

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 me at ([redacted] or you may contact Andrea Millar, Director, AICPA Personal Financial Planning Division at ([redacted] or [redacted].

Respectfully,

Jean-Luc Bourdon, CPA/PFS

Chair, AICPA Personal Financial Planning Legislative and Regulatory Task Force