



August 7, 2018

Via Electronic Mail

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

RE: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Enhancing Investment Adviser Regulation (S7-09-18)

Dear Chairman Clayton:

Thank you for the opportunity to comment on the SEC's proposal related to the standards of conduct of sales professionals and investment advisers. The comments and recommendations included in this letter were developed by the AICPA Personal Financial Planning Legislative and Regulatory Task Force. Our task force appreciates that your proposals address items of concern we raised in our letter submitted to you last year. We recognize that this is a very complex landscape with many hurdles to overcome and commend your efforts in this area.

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 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.

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 importance of competent, objective advice for individual investors cannot be overstated.

New Regulation Should Recognize Separate Business Models and Standards

There is a need for transaction-based sales professionals who deliver incidental investment advice and there is also a need for investment advisers, as defined by the Advisers Act. It serves the public best that both business models be maintained separately and that investors be allowed to easily distinguish between them. As proposed, it appears the two models would become almost indistinguishable, misleading consumers to believe that their needs are equally met by either alternative.

Dually Registered Advisers Should Be Subject to the Highest Standard Only

Maintaining the suitability standard for sales professionals while enforcing the fiduciary standard for investment adviser representatives under the Advisers Act of 1940 would maintain separation between both business models. Any dually-registered individual who fills both roles as an investment adviser representative and sales professional should be subject to the more rigorous fiduciary standard at all times. Otherwise, individuals control the standard applicable to them by "switching hats". This is confusing and harmful to the public. The solution is not to harmonize the standards applicable to separate business models, but to require individuals to be subject to a consistent standard.

Moreover, the standard of care for investment advisers must remain principles-based rather than rules-based to protect consumers. Principles-based standards recognize that what is in the best interest of the consumer will be based on each individual's unique and specific facts and circumstances. What will be "best" for one may not be the least bit appropriate for another. Professionals learn to build a supportable case for advice that is in a particular client's best interest, realizing that rules and checklists don't foster a practice that provides the best advice for the situation at hand. Creating a set of rules that advisers can use to protect themselves from litigation simply because they "followed the rules" is not a professional approach to giving advice nor does it lead to best results for consumers.

'Best Interest' is a Confusing Term

The new regulation is confusing because it implies that sales professionals would be held to a best-interest standard, when in fact they would not be responsible for acting in their clients' best interest at all times. We encourage the SEC to amend the regulation title so that it accurately reflects the suitability standard to which sales professionals would be held.

Clarity for the Consumer is Paramount

As currently proposed, there is not a well-defined standard of care that the public can easily understand; they won't easily distinguish between a fiduciary standard and a regulation best interest standard. Consumers must be able to easily differentiate and understand the standard of care to which their financial adviser is held. Adviser titles should provide common-sense clarity. 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 every client's best interest as a fiduciary at all times. Therefore, we agree that unless registered with a state or federal regulator as an investment adviser under the Advisers Act, no financial services professional should be allowed to call themselves an investment adviser. However, we do believe that if registered under the Advisers Act (or dually-registered), advisers should act as fiduciaries at all times and with all clients or customers. The incidental advice exemptive relief as codified in the Advisers Act should continue to apply, but only if the exempted persons do not hold out as providing investment advice, such as calling themselves investment advisers.

Disclosures Can Lead to Unfavorable Outcomes

It is essential that a consumer is informed of known conflicts and potential conflicts as soon as they are identified. However, disclosure should never absolve one from acting ethically and objectively. Efforts to eliminate conflicts of interest serve the public best, while disclosures do not lessen the financial incentive to act against the client's best interest. Yet, conflict of interest disclosures may serve to legally protect advisers from not acting in the client's best interest.

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



Charles R Kowal, JD, CPA (inactive)
Chair, AICPA Personal Financial Planning Executive Committee