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August 7, 2018

VIA ELECTRONIC SUBMISSION

Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
<http://www.sec.gov/rules/proposed.shtml>
rule-comments@sec.gov

**Re: File No. S7-09-18
Proposed Commission Interpretation Regarding Standard of Conduct for
Investment Advisers; Request for Comment on Enhancing Investment Adviser
Regulation**

Dear Secretary Fields:

The National Society of Compliance Professionals (“NSCP”) submits this letter in response to the request by the Securities and Exchange Commission (the “Commission”) for comments on the proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation (the “Proposal”).

The Proposal is of considerable interest to the NSCP and its members. NSCP is a nonprofit, membership organization with approximately 2,000 members and is dedicated to serving and supporting compliance professionals in the financial services industry in both the U.S. and Canada. NSCP’s mission is not unlike that of our regulatory counter-parts: insuring market integrity, investor protection, and promoting the effectiveness of the compliance function. To that end, NSCP’s efforts are accordingly directed at solely promoting the effectiveness of compliance programs and compliance officers.

The effectiveness of all regulations depends on how well they are understood and whether or not they can be implemented without unnecessary frictions within the regulated firms and unintended inefficiencies for investors. Compliance professionals are one of the key stakeholders in developing commercial yet compliant ways to implement regulations, achieving the desired effect of such regulations, and minimizing undesirable and inefficient impacts. However, unlike most other stakeholders, compliance professionals are incentivized to maintain an active and collaborative dialogue with the Commission.

NSCP’s responses to particular questions posed by the Commission reflect the view of interested NSCP members who provided comments to NSCP in response to the Proposal. Considering NSCP’s focus on compliance and compliance professionals, our comments will be limited to concerns that impact compliance programs and/or compliance professionals.

I. Fiduciary Duty

Does the Commission's proposed interpretation offer sufficient guidance with respect to the fiduciary duty under section 206 of the Advisers Act?

NSCP appreciates the Commission's willingness to obtain industry feedback on its guidance with respect to the fiduciary duty under section 206 of the Advisers Act. NSCP members commented that it will be difficult to comply with the proposed fiduciary duty interpretation if it is not more clearly explained. The current interpretation does not identify material conflicts that can be sufficiently mitigated with disclosure from situations in which disclosure cannot mitigate conflicts. Although compliance professionals are used to dealing with "facts and circumstances" and the interpretation is clear that the firm's fiduciary obligation itself cannot be waived by the client, there is still too much ambiguity to develop meaningful, actionable guidance within firms as to when a client can accept a conflict through disclosure, or when seeking such a waiver is tantamount to asking clients to waive the fiduciary duty (which is not permitted). NSCP believes actual examples would enable firms to develop workable guidance and train their staff without needing to seek expensive legal advice for each instance (which is beyond means of many small firms and, in any case, is often conditional absent clear SEC guidance.)

Are there any significant issues related to an adviser's fiduciary duty that the proposed interpretation has not addressed?

NSCP members commented that it would be instructive if the proposed interpretation addressed the extent of the duty of inquiry concerning a client's investment profile. Commenters would like clarification as to whether such duty mirrors the information required for broker-dealer suitability determinations or if there are additional elements to consider. As currently defined, "suitability" has a flexible standard, so the guidance should clarify whether if the client does not provide information that would be relevant to an adviser's determination as to what is in the best interest of the client (*i.e.*, partial disclosure of client's liquid net worth), the adviser can or cannot form an opinion that is in the client's best interest. The guidance should also clarify, what would be deemed a reasonable effort by an adviser to acquire relevant information concerning the client's investment profile. NSCP members suggest that the Commission also consider a safe harbor for those situations in which an investment adviser made reasonable efforts to obtain information concerning the client's investment profile and relied on those representations when entering into an advisory relationship, only to later discover that the client or the client's representative was not forthcoming with pertinent financial information and failed, for instance, to reveal its true net worth.

II. Federal Licensing and Continuing Education for Investment Advisers

The SEC requests comment on whether there should be federal licensing and continuing education requirements for personnel of SEC-registered investment advisers. Such requirements could be designed to address minimum and ongoing competency requirements for the personnel of SEC-registered advisers.

Should investment adviser representatives be subject to federal continuing education and licensing requirements?

a. Continuing Education

NSCP believes that continuing education is essential to professional development. However, many investment advisory firms already have continuing education requirements in place for designated employees mandated by FINRA Rule 1250, Continuing Education Requirements. Additionally, continuing education is required for other designations and professions, such as the CFA, CPA, and licensed insurance agents. The Commission should be mindful of the existence of firm and professional continuing education requirements and content already in existence in considering continuing education requirements. As with any new requirement, firms will be required to develop processes and procedures, as well as maintain a record of compliance. The burden can be lessened if investment advisers are able to tailor continuing education to their business models and utilize existing continuing education practices.

b. Licensing

NSCP recognizes the Commission's interest in federal licensing requirements for those investment adviser representatives who fall under the Commission's licensing authority, but any licensing requirements should not add to the already burdensome obligations on investment advisers.

NSCP members, recognizing the cost and burden of implementing additional regulatory requirements, believe that the industry would benefit if the Commission coordinated investment adviser licensing requirements with the states and/or the North American Securities Administrators Association ("NASAA") to avoid divergent regulatory requirements/models and associated costs and burdens of compliance. NSCP members further suggest the Commission consider grandfathering investment adviser representatives who have been in the industry for a period of time into any proposed licensing requirement.

Which advisory personnel should be included in these requirements? For example, should persons whose functions are solely clerical or ministerial be excluded, similar to the exclusion in the FINRA rules regarding broker-dealer registered representatives? Should a subset of registered investment adviser personnel (such as supervised persons, individuals for whom an adviser must deliver a Form ADV brochure supplement, "investment adviser representatives" as defined in the Advisers Act, or some other group) be required to comply with such requirements?



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a. Continuing Education

NSCP members believe it is reasonable to impose continuing education requirements on investment adviser representatives of a firm working with retail clients. There is no need to apply continuing education requirements to individuals who do not have a firm registration, nor would such a requirement be efficiently identified or administered by compliance professionals.

b. Licensing

As noted, additional licensing requirements should be carefully weighed against existing requirements and should not further burden firms with more regulatory obligations.

If continuing education requirements are a part of any licensing requirements, should specific topics or types of training be required? For example, these individuals could be required to complete a certain amount of training dedicated to ethics, regulatory requirements or the firm’s compliance program.

Investment advisers that are dually registered with FINRA are required to comply with the training requirements prescribed under FINRA Rule 1250, Continuing Education Requirements; Firm Element Requirements. NSCP believes that any additional continuing education requirements should mirror or at least complement FINRA Rule 1250 in order to avoid a divergent set of regulatory requirements and additional burden to compliance programs.

What would the expected costs of continuing education and licensing be? How expensive would it be to obtain the continuing education or procure the license? Do those costs scale, or would they fall more heavily on smaller advisers? Would these requirements result in a barrier to entry that could decrease the number of advisers and advisory personnel (and thus potentially increase the cost of advice)?

NSCP believes that costs of continuing education and licensing will depend on the type of continuing education and licensing requirements that have to be established. Costs would fall heaviest on smaller investment advisers and those firms that are not currently required to comply with licensing and continuing education requirements. Investment advisers would incur costs associated with the implementation of technology systems that are similar to FINRA CRD, licensing test fees, compliance oversight, and continuing education. In some cases, the requirement may result in a barrier to entry that may decrease the number of advisers and advisory personnel while potentially increasing the cost of investment advice.

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We commend the SEC for giving us this opportunity to present our views on the SEC's Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers. NSCP would welcome the opportunity to answer any follow-up questions that the SEC may have on this submission or to provide further assistance as the SEC may request.

Thank you for your attention to these comments. Questions regarding the foregoing should be directed to the undersigned at [REDACTED].

Sincerely,

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