



1125 N. Charles Street | Baltimore, MD 21201

February 10, 2020

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *Investment Adviser Advertisements; Compensation for Solicitations (File No. S7-21-19)*

Dear Ms. Countryman:

Stansberry & Associates Investment Research, LLC (“Stansberry Research”) respectfully submits this letter in response to a request by the U.S. Securities and Exchange Commission (“SEC” or “Commission”) for comments regarding the above-referenced release (“Proposal”).¹

The Proposal would, among other things, revise Rule 206(4)-3 (“Solicitation Rule”) under the Investment Advisers Act of 1940, as amended (“Advisers Act”) in a number of ways with the goal of “reflect[ing] regulatory changes and the evolution of industry practices since [the rule’s adoption] in 1979.”² The Proposal includes certain revisions to the Solicitation Rule’s disqualification provisions (“Disqualification Proposals”).³

None of the Disqualification Proposals would alter the effect of Advisers Act Section 203(e)(4) as it relates to activities of F. Porter Stansberry (“Mr. Stansberry”) that are subject to the Solicitation Rule. There was also no indication in the Proposing Release of a Commission policy shift relating to the effect of injunctions described in Advisers Act Section 203(e)(4) on solicitors like Mr. Stansberry. Nevertheless, the Commission noted that the Staff of the SEC’s Division of Investment Management is reviewing for withdrawal its no-action letter (“Stansberry Letter”) issued to Stansberry Research and Mr. Stansberry, which permits Mr. Stansberry directly or indirectly to receive payments subject to the Solicitation Rule notwithstanding the existence of an injunction of the sort described in Advisers Act Section 203(e)(4) that would otherwise disqualify Mr. Stansberry from receiving such payments.⁴

¹ Investment Adviser Advertisements; Compensation for Solicitations, 84 Fed. Reg. 67518 (Dec. 10, 2019) (“Proposing Release”).

² Proposing Release at sec. II.B.

³ *Id.* at sec. II.B.8.

⁴ *Id.* at sec. II.D.2; see F. Porter Stansberry, SEC Staff No-Action Letter (Sept. 30, 2015); see also Order, S.E.C. v. Agora, Inc., *et al.*, Civil Action No. 1:03-CV-1042-MJG (D. Md. Feb. 5, 2020) (vacating injunction as to Stansberry Research).



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Stansberry Research supports the Commission’s efforts to update the Solicitation Rule to reflect regulatory changes and the evolution of industry practices since the Solicitation Rule’s adoption. However, as discussed in more detail below, the Proposal represents no relevant change in law, regulation or policy relating to the conduct contemplated in the Stansberry Letter. As such, there is no basis for removing the regulatory flexibility the SEC Staff granted in the Stansberry Letter. Doing so would not only be legally unsupported and without any stated policy rationale, it would also terminate a business model that Stansberry Research has spent years and significant resources developing. Stansberry Research therefore respectfully requests that the Stansberry Letter not be withdrawn or, equivalently, that Mr. Stansberry and any adviser that currently relies, or may in the future rely, on the Stansberry Letter be “grandfathered” into compliance with the proposed rule.⁵

Background

Stansberry Research is a subscription-based publisher of financial information. Mr. Stansberry is an employee and the founder of Stansberry Research. As further described in the Stansberry Letter, Mr. Stansberry is currently subject to a permanent injunction (“Injunction”) issued by the United States District Court for the District of Maryland. In light of the Injunction, the Solicitation Rule would, absent the relief provided in the Stansberry Letter, preclude an investment adviser required to be registered pursuant to Advisers Act Section 203 from paying a cash solicitation fee to Mr. Stansberry, directly or indirectly, for the solicitation of advisory clients.⁶

The Disqualification Proposals would prohibit an investment adviser from directly or indirectly compensating a solicitor 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.” A person subject to a “disqualifying Commission action” or “disqualifying event” would be such an “ineligible solicitor” under the Disqualification Proposals, and as further discussed below, the Injunction would be a “disqualifying event” under the Disqualification Proposals.

The Commission acknowledged in the Proposing Release that “some advisers and solicitors rely on letters issued by the Commission staff stating that the staff would not recommend enforcement action to the Commission under section 206(4) and rule 206(4)–3 if an investment adviser paid

⁵ See Proposing Release at sec. II.B.8.c. (“We request comment, below, on whether we should ‘grandfather’ such persons into compliance with the proposed rule by permitting advisers to continue to compensate such solicitors after the effective date of the proposed rule, if the solicitors continue to comply with the conditions specified in the letters and, except for the disciplinary events described in the applicable letter, would not otherwise be ineligible solicitors under the proposed rule”); see also the final comment request in section II.B of the Proposing Release.

⁶ Under the Injunction, Mr. Stansberry is permanently enjoined from violating directly or indirectly Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder. As such, Mr. Stansberry is “permanently . . . enjoined by order . . . of [a] court of competent jurisdiction . . . from engaging in . . . any conduct or practice . . . in connection with the purchase or sale of any security” as contemplated under Advisers Act Section 203(e)(4). Because the Injunction is an injunction of the sort described in Advisers Act Section 203(e)(4), it triggers a disqualification under the current Solicitation Rule, as further discussed below.



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cash solicitation fees to a solicitor that was subject to particular disciplinary events that fall within the current rule's disqualification provision" and requested comment on whether such persons should be "grandfathered" into compliance with the proposed rule "by permitting advisers to continue to compensate such solicitors after the effective date of the proposed rule, if the solicitors continue to comply with the conditions specified in the letters and, except for the disciplinary events described in the applicable letter, would not otherwise be ineligible solicitors under the proposed rule."⁷ As mentioned above, the Commission noted that the SEC Staff is reviewing the Stansberry Letter for withdrawal.

Discussion

A. There is No Legal Basis or Stated Policy Rationale for Withdrawing the Stansberry Letter

Because (i) the Disqualification Proposals would not alter the effect of Advisers Act Section 203(e)(4) as it relates to activities of Mr. Stansberry subject to the Solicitation Rule; (ii) there has been no stated policy change relating to the effect of injunctions described in Section 203(e)(4) on solicitors like Mr. Stansberry; and (iii) there is no other basis for disqualification under the Solicitation Rule or the proposed rule's Disqualification Provisions with respect to Mr. Stansberry, the Stansberry Letter should not be withdrawn and Mr. Stansberry should, subject to the conditions set forth in the Stansberry Letter, continue to be eligible directly or indirectly to receive payments subject to the Solicitation Rule.

Simply put, the Proposal represents no relevant change in law, regulation or policy relating to the conduct contemplated in the Stansberry Letter. As such, there is no basis for removing the regulatory flexibility the SEC Staff granted in the Stansberry Letter. Doing so would not only be legally unsupported and without any clear policy rationale, it would also terminate a business model that Stansberry Research has spent years and significant resources developing.

B. The Injunction's Effect Is Identical Under the Current Solicitation Rule and the Proposal

The Solicitation Rule currently makes it unlawful for an investment adviser required to be registered pursuant to Advisers Act Section 203 to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities if, among other things, the solicitor "is subject to an order, judgment or decree described in section 203(e)(4) of the Act."⁸

Under the Disqualification Proposals, advisers would face a similar prohibition as a result of orders described in Advisers Act Section 203(e)(4). The Disqualification Proposals would prohibit an investment adviser from directly or indirectly compensating a solicitor for any solicitation activity if the adviser knows or (in the exercise of reasonable care) should have known that the solicitor is

⁷ Proposing Release at sec. II.B.8.c.; see also the final comment request in section II.B of the Proposing Release.

⁸ See Advisers Act Rule 206(4)-3(a)(1)(ii)(D).



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an “ineligible solicitor.” A person subject to a “disqualifying Commission action” or “disqualifying event” would be such an “ineligible solicitor” under the Disqualification Proposals. Of the various matters that would be deemed “disqualifying Commission actions” or “disqualifying events,” the Injunction would fall within only one – namely, “The entry of an order, judgment or decree described in paragraph (4) of section 203(e) of the Act, by any court of competent jurisdiction within the United States,” which would be deemed a “disqualifying event.”⁹

Thus, the Injunction would have precisely the same effect on Mr. Stansberry under the Proposal as it currently has under the Solicitation Rule. Namely, because the Injunction is an injunction of the sort described in Advisers Act Section 203(e)(4), it triggers a disqualification under the current Solicitation Rule and would trigger a disqualification under the Proposal. The Commission acknowledged as much in the Proposing Release, noting that this prong of the Disqualification Proposals “would generally follow the corresponding provision of the current rule’s disqualification provision,” with the exception of limiting the relevant orders, judgments and decrees to those of domestic courts.¹⁰

C. The Commission Stated No Policy Rationale for Withdrawing the Stansberry Letter

In the Proposing Release, the Commission equated its policy position underlying this prong of the Disqualification Proposals with its policy position for the corresponding provision of the current Solicitation Rule: “*As when we adopted the cash solicitation rule, we continue to believe that these events should be disqualifying under the rule . . .*”¹¹ The Commission’s discussion in the Proposing Release then turned to its rationale for limiting the relevant orders, judgments and decrees to those of domestic courts, and the Commission offered no further general discussion of its policy views relating to this prong of the Disqualification Proposals. Thus, there is no apparent Commission policy shift relating to the effect of injunctions described in Advisers Act Section 203(e)(4) on solicitors like Mr. Stansberry.

* * *

Stansberry Research appreciates the opportunity to comment on the Proposal. As stated previously, Stansberry Research supports the Commission’s efforts to update the Solicitation Rule to reflect regulatory changes and the evolution of industry practices since the Solicitation Rule’s adoption. However, for the reasons set forth above, Stansberry Research respectfully requests that the Stansberry Letter not be withdrawn or, equivalently, that Mr. Stansberry and any adviser that currently relies, or may in the future rely, on the Stansberry Letter be “grandfathered” into compliance with the proposed rule “by permitting [any such] advisers to continue to compensate [Mr. Stansberry] after the effective date of the proposed rule, if [Mr. Stansberry] continue[s] to

⁹ See proposed rule 206(4)-3(a)(3)(iii)(B)(4).

¹⁰ Proposing Release at sec. II.B.8.c.

¹¹ *Id.* (emphasis added) (discussing the disqualification event described at proposed rule 206(4)-3(a)(3)(iii)(B)(4)).



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comply with the conditions specified in the [Stansberry Letter] and, except for the disciplinary even[t] described in the [Stansberry Letter], would not otherwise be [an] ineligible sollicito[r] under the proposed rule.”¹²

If you have any questions regarding our comment letter or would like additional information, please contact me at (410) 995-8995.

Sincerely,

A handwritten signature in blue ink that reads "Gary D. Anderson". The signature is written in a cursive style and is positioned above a horizontal line.

Gary D. Anderson
General Counsel
Stansberry Research

¹² Proposing Release at sec. II.B.8.c.; see also the final comment request in section II.B of the Proposing Release.