

February 21, 2020

Via Electronic Filing

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Investment Adviser Advertisements; Compensation for Solicitations (File Number S7-21-19)

Dear Ms. Countryman,

Baillie Gifford Overseas Ltd (BGO) supports the Securities and Exchange Commission's proposal to amend the Investment Advisers Act rules for adviser advertising and solicitation and welcomes the opportunity to provide a comment letter regarding the proposed amendments.

Baillie Gifford is a Scottish based investment advisory firm with a long history focused on active investment management. Our client base is predominantly institutional in nature and located globally. Assets under management as at 31st December 2019 were \$290bn and institutional clients based in the United States represent approximately 45% of client AUM. Our investment philosophy is to identify quality investments with the potential to grow over the long term. BGO is authorized and regulated by the Financial Conduct Authority in the United Kingdom and is registered as an investment adviser with the Securities and Exchange Commission in the United States.

In June 2018, senior members of staff from Baillie Gifford met with the Commission's Division of Investment Management to share our experiences of the adviser advertising rule and in particular the challenges arising from the prohibition on past specific recommendations. We discussed how this unduly restricted our ability to disseminate to institutional clients or investors 'thought pieces' which are intended to illustrate or describe our investment philosophy or process in action and that typically include stock examples. We also described our comparative experience of operating under the Financial Conduct Authority's principles-based advertising rules in the United Kingdom.

We are very pleased to see that the Commission has proposed to amend and modernize the advertising rule and is proposing a principles-based rule. We also commend the Commission in its efforts to make the rule less prescriptive, inclusion of guidelines for testimonials and recognizing the distinction between retail and sophisticated clients. We believe the proposed rule will be more

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flexible and will enable clients and investors to benefit from receiving materials from advisers which help demonstrate the advisers' investment process and philosophy and that are compliant with the requirements of the new rule.

There are, however, a few areas of the proposal that we feel require amendment or further clarification to ensure that they do not impose significant operational and compliance processes that are unduly burdensome on advisers and potentially impede their ability to communicate effectively with clients or investors.

We would like to provide comment on the following specific areas:

1. Scope of the Rule: Definition of "Advertisement"

The Commission proposes to broaden the definition of an advertisement in the Advertising Rule. In general, we are in favor of the proposed extension to the definition of an advertisement but would want to ensure not all adviser communications are in scope of the rule. The Commission specifically requests comment on whether the proposed rule's definition of "advertisement" includes communications that should not be subject to the requirements of the proposed rule. We would like the Commission to clarify whether they intend to capture Requests for Proposal/Information (RFP/RFI) from institutional clients or investors within the extended definition. An RFP/RFI is a process typically used by institutional clients or investors and their advisers or consultants to assist them in the selection of a future investment adviser service provider. They are initiated by the client or investor and will typically be sent to a range of investment advisers for completion and return by a specified date. The institutional client or investor will then use the information provided in response to the questions in the RFP/RFI amongst other inputs to determine whether to proceed further with the potential investigation of a new investment adviser and typically there will be further steps involved before the making of a decision to appoint the adviser, including potentially on-site due diligence, contract negotiation, investment committee review as examples. We note that the Commission has provided a specific exclusion for communications that do no more than respond to unsolicited requests for information. Whilst an RFP/RFI is a response to an unsolicited request, it is not clear that they would meet the 'do no more than' test. When an institutional client or investor is conducting a search for a new investment adviser, as noted, there will be many stages to their selection process. The RFP will form part of the early stages for information gathering. Later stages of the process will likely include detailed due diligence reviews of advisers. Due to the sophistication of institutional clients or investors, and the many selection and review stages involved in selecting a new adviser, we do not believe that it would be beneficial for RFP/RFIs to be captured under the definition of an advertisement and we believe that this will impose significant operational and compliance burdens on advisers. As an example of the compliance burden this may present, we currently respond to approximately 200 RFP/RFIs each year, the responses are generally lengthy and we estimate that each would take a compliance or legal professional two full days to complete technical and compliance checks. Responses to RFPs/RFIs are also typically time-bound in nature, so there may be additional time constraints in completing such reviews.

We do not believe that a compliance review of Institutional RFP/RFIs will provide additional protection to investors. We would therefore propose that the exclusion from the definition of an advertisement is amended to say "responses to unsolicited requests on a one-to-one basis that are reasonably responsive to an enquiry from a non-retail person". This would provide advisers with clarity that this type of communication is outwith the scope of the definition.

2. Review and Approval of Advertisements

We agree with the proposal to require an adviser to have an advertisement reviewed and pre-approved for consistency with the requirements as we agree that this is a strong control that will reduce the likelihood of advisers violating the proposed rule. Whilst we also agree that the rule should exclude communications that are disseminated only to a single person or household, we believe that further clarity around this point is required. Whilst a strong and effective control, reviewing and approving advertisements can be a resource heavy requirement for advisers, so it is therefore extremely important that it is clear what is and is not in scope of this requirement to ensure that advisers are confident that they are compliant with the rules.

Requests for Information/Proposal (RFP/RFI): As noted above, we have suggested that RFP/RFIs for institutional clients or investors should not fall within the definition of an advertisement. However, if the Commission determines that they are included in the definition, we would suggest that the Commission clarifies that these would fall within the scope of 'disseminated to a single person' exclusion from the approval process.

Consultants: We respectfully suggest that the Commission considers the role of consultants in the institutional market. It is common for advisers to send communications to an institutional client or prospective client or investor which would fall under the scope of the 'disseminated to a single person' exclusion was it not for the fact that the adviser has also copied the communication to the client/investor's consultant. We anticipate that this type of communication would be permissible assuming that the consultant is not planning on delivering the communication to other clients or investors they may have. We further anticipate that a communication issued directly to a consultant, which initially meets the disseminated to a single person exclusion, would not meet the spirit of the rule if it were intended for dissemination to more than one of the consultant's clients.

Client servicing and reporting to existing investors: We understand that communications with existing clients or investors is out of scope unless it could be seen to offer or promote the services of the adviser. Our understanding is that regular statements and reports to existing investors would be out of scope on the basis that these are reporting on their existing holdings. Where a statement or report is being produced for a particular strategy or pooled investment fund, numerous versions of the statement or report may be produced and then the template customized with the client or investor's name. We still understand that, whilst mass mailings would not fall within the 'single person' exclusion, the fact that these statements or reports contain information about an existing investment, they would be out of scope of the definition of an advertisement. That said, regular statements or reports often contain forward looking market analysis. As noted on page 32 of the proposed rule, communications to existing clients or investors that include the adviser's own market commentary, or a discussion of the adviser's investing thesis may be considered to be "offering or promoting" the adviser's services and may fall within the definition of an advertisement. We think it is important that the Commission clarifies that an adviser would be in compliance with the 'review and approval of an advertisement' requirement if they were to review and approve the market commentary once and then add this to the regular statement or report. Under this methodology, the remaining sections of the regular statements or reports would not be subject to review and approval under the proposed rule. This approach would ensure that any information that may act as an offer or promotion would be treated as an advertisement and reviewed and approved but would not be overly burdensome on advisers.

We appreciate the Commission's consideration of our comments on these important proposals and would be happy to provide any additional information that may be helpful. Please contact the undersigned at [REDACTED] or Sarah McKechnie at [REDACTED] if we can be of further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Quinn', with a large, sweeping flourish extending to the right.

Suzanne Quinn

Head of North America
Compliance Department
Baillie Gifford Overseas Ltd