July 7, 2020

SENT VIA EMAIL

Sarah ten Siethoff
Associate Director
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-21-19 — Thank you; follow-up to our conversation

Dear Ms. ten Siethoff,

We are sending this letter to thank you for the opportunity to speak with you and other members of the Staff on June 19, 2020. We particularly appreciate you and your colleagues for the professionalism and courtesy with which the rulemaking process has been conducted to date. Following our meeting, we would like to reiterate some key points of our discussion related to the questions you posed and suggest certain additional clarifications to the SEC's proposed updates to the advertising and solicitation rules (the "Rules") in light of this discussion. For ease of reference, we have organized our points according to the order in which we discussed your questions, which follow the numbered headings below. Following those headings, where appropriate or helpful, we have also included or referenced relevant text—in bold—from the proposed rules. Where we have suggested further edits to the proposed rules, our suggested additions are underlined and our suggested deletions are struck through.

1. **Would hyperlinking completely solve those problems, or are there other conditions (e.g. amount of text) imposed by those platforms that could provide challenges for advertisements under the rule?**

The proposed rule states that "it would not be consistent with the clear and prominent standard to merely include a hyperlink to disclosures available elsewhere."

As noted in our comment letter, we recommend taking a holistic approach to material disclosures in advertising materials that is informed by consumers' online purchase experiences. Our view is that hyperlinking is not inferior to other ways of providing disclosures,

but rather an effective way to deliver information in increasing waves of granularity. Moreover, hyperlinking is consistent with consumers' expectations regarding their online experience overall, particularly in connection with their purchasing experience. Hyperlinking would also allow an adviser to ensure that its disclosures contain appropriate levels of detail given the space and text constraints present within a number of popular mainstream advertising platforms such as Google and Facebook, as we highlighted in our comment letter and on our call. Ideally, viewers should be able to link from an advertisement to a landing page that would include the relevant disclosures, which would be clear, prominent, and contextually appropriate.

With this in mind, and in keeping with our support for an outcome similar to FINRA's "one click away" approach, we would propose the following addition to proposed rule § 275.206(4)-1(a)(4):

Discuss or imply any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without clearly and prominently discussing any associated material risks or other limitations associated with the potential benefits<u>, or clearly directing clients or investors to such a discussion through technological means such as a hyperlink</u>.

2. **Which aspects of the proposal do you believe would pose challenges for the practice of utilizing testimonials? Do you have any suggestions as to how we can allow an adviser to display a positive review while ensuring that the advertisement is fair and balanced?**

The relevant portion of the proposed rule defines a testimonial as "any statement of a client's or investor's experience with the investment adviser or its advisory affiliates."

As noted in our comment letter, we request additional clarity as to whether testimonials that discuss technological aspects of an adviser's platform would be considered a testimonial and recommend permitting the employment of a rating system to balance the use of testimonials discussing an adviser's investment management and advisory services. It is currently unclear whether testimonials that focus on a client's functional experience would be subject to the proposed rule. Also, discerning and disclosing "important context" for such testimonials, as the rule proposal suggests, would be burdensome and costly.

We would propose the following addition to the proposed definition of testimonial at § 275.206(4)-1(e)(15):

Testimonial means any statement of a client's or investor's experience with <u>the investment advice or securities transactions provided by</u> the investment adviser or its advisory affiliates, as

defined in the *Form ADV Glossary of Term*s.

3. **Do you have any suggestions for how the proposed rule's line should be drawn for attributing 3rd party statements to the adviser – i.e. statements that are deemed "by or on behalf of" the adviser?**

Commenting on the proposed revision to the definition of advertisement, the SEC states: "We believe that whether third-party information is attributable to an adviser under the "by or on behalf of" standard depends upon whether the adviser has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information."

As written, the proposed rule would impact our potential use of influencers or use of affiliate networks. It would also impact our potential use of pay for clicks, retweets, comments, or other forwards. These are generally regarded as mainstream practices, and in our experience they are commonly employed across a range of industries. Ideally, the rule would apply only to ads that we have created or commissioned and edited. Correcting false or misleading information should not be "involvement."

In addition, we noted in our discussion that we have concerns over how the SEC might interpret the phrase "implicitly endorsed or approved the information." Anticipating and complying with the wide range of possible interpretations as to what may constitute "implicitly" endorsing or approving information would be unpredictable, impractical, and costly. As such, should the Staff choose to retain this "endorsement or approval" concept in adopting the final Rule, we would ask the Staff to consider striking the "Implicit" endorsement or approval standard, or further constraining the potential for impractical or costly interpretations of that standard.

We would propose the following update to the definition of advertisement at § 275.206(4)-1(e)(1):

Advertisement means any communication, disseminated by any means, by or on behalf of an investment adviser, that offers or promotes the investment adviser's investment advisory services or that seeks to obtain ~~or retain~~ one or more investment advisory clients or investors in any pooled investment vehicle advised by the investment adviser.

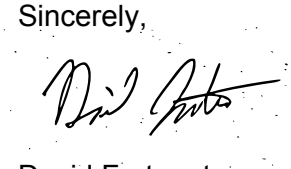
We would also propose clarifying the circumstances in which an advertisement will be deemed made "on behalf of" an investment adviser by adding the following provision to the definition of advertisement at § 275.206(4)-1(e)(1)(v) or in another appropriate location:

<u>An advertisement is made "on behalf of" an investment adviser if it has been commissioned or</u>

solicited by the investment adviser and the investment adviser retains or attempts to exercise editorial control over the advertisement. A communication by an investment adviser that does no more than seek to amend or correct a factual inaccuracy in a communication by a third party or seek to ensure that such a communication is not materially inaccurate or misleading shall not be deemed an attempt to exercise editorial control over that communication by the investment adviser.

Once again, Wealthfront thanks you for your courtesies, and we appreciate the opportunity to provide comment and input on the proposed rule. If you have any questions or would like to discuss these comments, please do not hesitate to contact me at david@wealthfront.com or our Chief Legal Officer, Julius Leiman-Carbia at juliusleimancarbia@wealthfront.com.

Sincerely,



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