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Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation (RIN 3235-AM36; File No. S7-09-18)

Dear Mr. Fields:

CFA Institute[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or the "Commission") on its proposed interpretation of conduct for investment adviser and its request for comment on enhancing investment adviser regulation. CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and on issues of fairness, transparency and accountability of global financial markets.

Executive Summary

We request additional guidance on situations when an adviser's fiduciary duty requires mitigation before disclosure relating to complex products. We also question the role of robo-advisers in those situations.

We support considerations of certain enhancements to investment adviser regulation raised by the Commission. In particular, we support federal licensing of investment advisers, as well as continuing education requirements. And we support requiring advisers to have fidelity bonds in order to provide additional protection for customer assets.

[1] CFA Institute is a global, not-for-profit professional association of more than 160,000 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 153,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 150 member societies in 73 countries and territories.

We do not, however support a net capital requirement for investment advisers or requiring advisers to provide account statements on a regular basis. Given existing regulations and practices, adopting formal requirements in both areas is unnecessary.

Discussion

Interpretation of Investment Advisers' Fiduciary Duty

We appreciate the clarification provided by the Commission about the standard of conduct owed by registered investment advisers ("Interpretation"). As the Commission proposes a new standard of conduct for broker-dealers, we find it helpful to know its views on the standard applicable to advisers. While much of the Interpretation affirms well-established components and applications of the registered advisers' standard of conduct, we found discussions in two areas particularly interesting.

First, while we agree that robo-advisers should operate under a fiduciary duty, our principal concern is for ensuring someone within each firm is accountable when there is a breach of this duty. While staff's updated guidance[2] provided helpful advice on how to navigate this duty, it left the question of to whom liability attaches unanswered.

For example, would breach of any of the components of fiduciary duty lead to liability by the firm, the personnel using the platform to advise clients, an in-house creator of the algorithm, supervisor of the creator, or others? Would the source that is liable depend upon the particular component of fiduciary duty that was breached? Or would liability be based on the level and type of interaction each firm has with its clients? As the use of robo-advisers increases, we encourage the SEC to provide the industry with detailed guidance in this area.

Second, while we understand that advisers must disclose all material conflicts of interest and in some situations obtain informed client consent, we question when an adviser's disclosure of certain conflicts might be insufficient to fulfill its duty of loyalty and section 206 of the Investment Advisers Act of 1940 ("Advisers Act"). The Interpretation notes that an adviser may not fulfill its duty by accepting or inferring client consent where either the client appears not to understand the conflict's nature or importance, or where the material facts of the conflict cannot be fully and fairly disclosed. In such cases, the adviser would be required to eliminate the conflict or mitigate it to an extent where it could "be more readily disclosed."

It is unclear whether the duty presented in this Interpretation creates a new level of duty beyond what is already required of advisers through Form ADV. In particular, General Instruction 3 to Form ADV Part 2 already requires advisers to provide "full disclosure of all material conflicts" that could affect the advisory relationship. This General Instruction also requires advisers to provide "sufficiently specific facts" to enable the client to understand the conflicts and adviser business practices to be able to give informed consent. If the Interpretation contemplates a duty

[2] https://www.sec.gov/investment/im-guidance-2017-02.pdf

beyond that which is already addressed in Form ADV, we ask for additional guidance on its purpose, how it differs from the existing disclosures, and how it should be applied.

We also find that this raises a question with respect to the fiduciary duty of robo-advisers, particularly when dealing with complex products or situations. We would appreciate Commission guidance on who, in the context of robo-advising, has the duty for determining whether the disclosure of a conflict would be too complex for a client to understand?

Consideration of Enhanced Investment Adviser Regulation

Federal Licensing and Continuing Education

CFA Institute supports federal licensing and continuing education requirements for investment adviser representatives ("IARs") of SEC-registered investment advisers, as a positive move to raise investor protection, as well as to raise the standard of professionalism in the industry. We believe that reasonable licensing components would consist of an initial competency/qualification examination with ongoing continuing education requirements thereafter. Such an approach and the visibility it brings for IAR fitness may help thwart the actions of bad actors who, while amassing assets under management to qualify for SEC registration, still lack basic competency and a commitment to ethics. While it is impossible to defer all bad actors *ex ante*, we believe increased attention to professionalism, and an increased emphasis on ethics, will help focus those entering the field.

While we believe many IARs of SEC-registered advisers receive substantial in-house training and guidance, federal licensing requirements would provide additional safeguards to ensure IARs have an essential degree of competence before entering the field by having to pass a qualification/competency examination. Well-designed continuing education requirements beyond mere "tick-the-box" seminars, could similarly help IARs maintain their competence and reinforce their awareness of ethics.

We believe such licensing requirements should not apply to all staff of IARs, and should exclude ministerial and clerical staff. Instead, we suggest any such future rules apply solely to IARs, as defined in the Advisers Act. We also do not believe a continuing education program necessarily needs to include the firm's compliance program, as many firms provide their own in-house training.

We also suggest that continuing education requirements include training dedicated to ethics, to updates on regulatory matters, and to innovations within the industry, including new investment products. But we caution on allowing what are essentially sales events put on by product providers to qualify as continuing education. These events not only lack the substance of meaningful continuing education requirements, but also may create additional conflicts of interest for advisors to sell specific products.

Finally, we are sympathetic to the added costs such requirements will impose on certain firms. Nevertheless, we believe encouraging high-quality professionals who receive additional training is a justifiable cost of doing business in an area that depends heavily on knowledge and ethics.

Provision of Account Statements

We agree that many advisers already provide their clients with account statements, even though they are not required to do so under federal securities laws. We also recognize that advisers that have custody of client assets are legally required under the Adviser's Act custody rule to have a reasonable basis for believing the custodian holding those assets provides statements to clients on at least a quarterly basis. Likewise, we recognize that program sponsors or their designees of an investment company relying on rule 3a-4 of the Investment Company Act of 1940 must also provide quarterly statements containing information.

Given the various legal requirements, we do not believe it is necessary to impose a supplementary disclosure requirement. In many ways, such new requirement would be duplicative of existing obligations.

Financial Responsibility

We appreciate that broker-dealers must meet a net capital rule to ensure resources are in place to avert potential financial collapse, and to ensure resources are available to aid in the recovery of client funds. Investment advisers, by comparison, have no such express obligation.

We do not support consideration of a rule that would impose a minimum net capital requirement on investment advisers. As the SEC notes, advisers with custody of client assets undergo a surprise exam conducted by independent accountants each year. Moreover, they are required to disclose any material financial conditions that could impair their ability to service their clients.

We believe that requiring advisers to have fidelity bonds to help cover potential losses in the event of adviser failure would go further to close such financial gaps. It also would be a more reasonable solution than imposing a net capital requirement, whose complex calculations would ultimately require hiring of full-time staff to address.

Conclusion

We appreciate Commission clarification of the investment adviser fiduciary duty and suggest additional guidance for the industry. With respect to possible future rulemaking, we support a federal licensing requirement for advisers as a means of raising professionalism in the industry. Should you have any questions about our positions, please do not hesitate to contact James Allen, CFA james.allen@cfainstitute.org, 434-951-5558 or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org, 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht	/s/ James Allen	/s/ Linda L. Rittenhouse
Kurt N. Schacht, CFA Managing Director, CFA Institute Advocacy	James Allen, CFA Head, Capital Markets Policy CFA Institute Advocacy	Linda L. Rittenhouse Director, Capital Markets CFA Institute Advocacy