



NASAA

August 21, 2002

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street NW
Washington DC 20549-0609

**Re: Supplemental Comment
Proposed Amendments To Investment Company Advertising Rules
File No. S7-17-02**

Dear Mr. Katz:

Although the initial deadline for comment has passed, the North American Securities Administrators Association, Inc. (NASAA)¹ has reviewed the comments made by others regarding the Commission's "Proposed Amendment to Investment Company Advertising Rules," File No. S7-17-02. We are so concerned about the thrust of some of the comments that we feel compelled to submit this supplemental letter.

We applaud every Commission effort to afford investors with greater protection. That is why we are concerned that several of those commenting are attempting to use this rulemaking regarding investment company advertising as a platform to modify advertising rules – and possibly affect investor protections – that relate to investment advisers.

Section 206(4) of the Advisers Act's anti-fraud provisions prohibits an investment adviser from engaging "in any act, practice or course of business which is fraudulent, deceptive or manipulative." Commission Rule 206(4)-1 expressly makes it unlawful for an adviser to "directly or indirectly, to publish, circulate, or distribute any advertisement" that does one of the following:

- 1 Refers to any testimonial of any kind regarding the adviser's services;
- 2 Refers to past specific recommendations of the adviser, detailed information is made available about historical recommendations of the adviser;
- 3 Represents that any graph, chart, formula or other device offered by the adviser can, in and of itself, determine for a client which securities to buy or sell, or when to buy or sell them; or

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

- 4 Contains any statement to the effect that any report, analysis or other service will be furnished free, unless it is entirely free; or
- 5 Contains any untrue statement of a material fact, or which is otherwise false or misleading.

“Advertisement” is defined to include any written communication “addressed to more than one person, or any notice or other announcement in any publication or by radio or television” that offers any analysis, report, publication or investment advisory service related to securities.

Some of those commenting on the investment fund advertising rule suggest that these standards should be replaced by a more subjective test that considers various factors.

The objective character of the Commission’s investment adviser advertising rule is its strength. Advisers know the standards to which they will be held. Further, investment adviser guidelines recommended by NASAA and adopted by most of its members expressly track those in Rule 206(4)-1. (See “Unethical Business Practices of Investment Advisers,” April 27, 1997.) If the SEC took action viewed as weakening investor protections, states most certainly would reinstate them in separate legislation. Because the states retain jurisdiction over SEC-registered investment advisers in instances of fraud, changing the rules could not only lessen the protections under federal law for investors, but face advisers with a conflict between the activities deemed fraudulent by the SEC and state regulators.

It may be that a limited review of the investment adviser advertising rules is warranted as a separate matter. However, NASAA objects to the suggestion the changes be considered in the context of the mutual fund rules. We urge in the strongest terms possible that the Commission not proceed in this manner.

Thank you for your consideration of these views.

Sincerely,



Joseph Borg
NASAA President
Director, Alabama Securities Commission