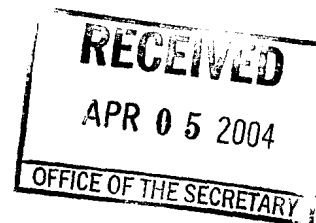


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April 5, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609



Re: Release Nos. IA-2209; IC-26337; File No. S7-04-04; Proposed Rule: Investment Advisor Codes of Ethics

Dear Mr. Katz:

The American Institute of Certified Public Accountants (AICPA) offers the following comments to the Securities and Exchange Commission's (the Commission) proposed rule on an Investment Advisor Code of Ethics.

The AICPA strongly supports the need for investment advisors "to adopt...a code of ethics applicable to its supervised persons." Ultimately, the protection of the investor public should and must be the primary purpose of any code of ethics adopted by a professional body.

The AICPA recommends the Commission develop a general framework or criteria for the ethical conduct of investment advisors. However, we seek acceptance of the Code of Ethics of professions or professional organizations that have established enforceable codes of ethics that meet or exceed the general guidelines developed by the Commission. This recommendation recognizes that various professional organizations may meet or exceed the SEC general framework and seeks to avoid multiple sets of regulations with which members of such organizations must comply.

History of the AICPA and Professional Ethics

The AICPA is the national, professional organization of CPAs, with 340,000 members in business and industry, public practice, government, and education. As one of its many responsibilities to its members, the AICPA sets ethical standards. The AICPA has adopted a strict Code of Professional Conduct¹ that expresses the profession's recognition of its responsibilities to the public, to clients, and to colleagues. By becoming a member, a CPA, including those who provide investment advisory services, assumes an obligation of self-discipline above and beyond the requirements of laws and regulations.

¹ The Code consists of two sections—(1) the Principles and (2) the Rules. The Principles provide the framework for the Rules, which govern the performance of professional services by members. The Council of the AICPA is authorized to designate bodies to promulgate technical standards under the Rules, and the bylaws require adherence to those Rules and standards.

The AICPA provides guidance and support to members who provide investment advisory services. In addition to the Code of Professional Conduct, the AICPA has issued Statements on Responsibilities in Personal Financial Planning that outline a member's obligations in financial and investment advisory services. In addition, for members providing financial planning and investment advisory services to the investor public, the AICPA grants a recognized financial planning credential, the Personal Financial Specialist (PFS). Many PFS credential holders are leaders in the investment advisory profession and strive to promote higher standards of conduct for all advisors.

Standards of Conduct and Compliance with Laws

The Code of Professional Conduct was adopted by the AICPA membership to provide guidance and rules to all members in the performance of their professional responsibilities. The Code guides members in the performance of their professional responsibilities and expresses the basic tenets of ethical and professional conduct.

The Code provides strict guidelines for supervising the work of others. Rule 201 of the Code (General Standards) requires a member to provide services with competence, to exercise due professional care, and adequately plan and supervise the performance of all professional services. Rule 102 of the Code (Integrity & Objectivity) requires in the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

Protection of Material Nonpublic Information

The Gramm-Leach-Bliley Act and the related Federal Trade Commission (FTC) regulations contain restrictions on the disclosure of personal financial information of certain individual clients and also require the distribution of privacy notices to those clients. AICPA members are further bound by Ethics Rule 301 of the Code, which prohibits members from disclosing confidential client information without the specific consent of the client.

Reporting of Violations; Adviser Review and Enforcement

The AICPA and each of the state CPA societies have respective codes of professional conduct that their members are obligated to observe as a condition of their membership. The provisions of the codes of many state societies are identical with, or similar to, the provisions of the AICPA Code of Professional Conduct. Because of this identity and similarity, and because it is not uncommon for a CPA to be a member of both the AICPA and one or more state societies, the AICPA and virtually all of the state societies have joined together to create a Joint Ethics Enforcement Program. The Joint Ethics Enforcement Program defines the rules and procedures for enforcing the codes of conduct and is designed to eliminate duplicate investigations of a potential disciplinary matter by both the AICPA ethics division and the ethics committee or committees of one or more participating state societies.

The Professional Ethics Division of the AICPA and the state society ethics committees are charged with investigating complaints against their members. A potential disciplinary matter may come to the attention of an ethics committee as a result of a complaint² or other information³. The AICPA will

² A complaint is a written communication to an ethics committee, a participating state society, or the AICPA that alleges, implies, or suggests that a member or a firm has or may have violated one or more provisions of an applicable code of professional conduct.

conduct an initial review of the complaint or other information and, if necessary, an investigation of the matter in accordance with the procedures of the Joint Ethics Enforcement Program.

Other Code of Ethics Provisions

The AICPA does not provide specific comment on the Commission's queries regarding personal securities trading, initial public offerings and private placements, acknowledged receipt of code of ethics, recordkeeping, amendment to Form ADV and investment company advisers, but generally supports any efforts designed to protect the interests of investors. To the extent such topics are not currently addressed in the AICPA's or other professional organization's code of ethics, we recommend a collaborative approach to supplementing existing codes of ethics with such topics.

Adoption of a Framework for Codes of Ethics

Many organizations who support investment advisors have adopted frameworks for ethical behavior among their members – some of which include similar provisions to those adopted by the AICPA and articulated above. A code of ethical conduct generally consists of two sections -- (1) Principles and (2) Rules. The Principles provide the framework for the Rules, which govern the performance of professional services by members. A designated body promulgates the technical standards under the Rules, and the bylaws of the organization require the adherence to those Rules and standards.

The frameworks adopted by these organizations vary, often reflecting the differing interpretations, public comment, practices and services provided by their members to the public. Although the underlying principles and rules of an ethical framework may differ from organization to organization, the intended result of any code of ethics is the protection of the public interest.

Recommendations and Conclusion

The AICPA recommends the Commission develop a general framework or criteria for the ethical conduct of investment advisors. However, because a number of professions and professional organizations have established effective codes of conduct, we request the SEC accept the Code of Ethics of those organizations whose ethics codes meet or exceed the general guidelines for any framework established by the Commission. The AICPA further recommends that such acceptance only be granted by the Commission to those organizations whose code of ethics includes an effective enforcement process.

Accordingly, investment advisors should abide by the Commission's ethical framework and can be in compliance as long as they are members of a professional organization whose codes of ethics are recognized to meet or exceed the requirements of the general framework. If the Commission requires assistance in developing a general framework, the AICPA would be pleased to provide assistance and encourages the Commission to also reach out to other professional organizations who have adopted such codes of ethics for assistance.

The Commission has established precedence in recognizing frameworks by permitting SEC registrants to adopt individual frameworks in its final rule on internal control reporting.³ In the Proposing

³ Other information is any information sent to or obtained by an ethics committee that alleges, implies, or suggests that a member or a firm may have violated one or more provisions of an applicable code of professional conduct.

⁴ **Final Rule:** Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports. Release Nos. 33-8238; 34-47986; IC-26068; File Nos. S7-40-02; S7-06-05

Release, the Commission requested comment on whether it should establish specific evaluative criteria for management's report on internal control, as required under Section 404 of the Sarbanes-Oxley Act of 2002. After consideration of the comments to the proposed rule, the Commission modified the final requirements to specify that management must base its evaluation of the effectiveness of the company's internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.⁵

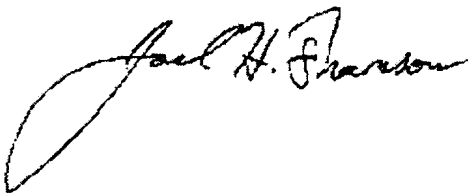
The final rules did not mandate use of a particular framework, such as the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") Framework, in recognition of the fact that frameworks other than COSO may be developed within the United States in the future, that satisfy the intent of the statute without diminishing the benefits to investors. The final rules require management's report to identify the evaluation framework used by management to assess the effectiveness of the company's internal control over financial reporting.

Although the AICPA strongly supports the adoption of high ethical standards by investment advisors, we argue against the Commission adopting or mandating a code of ethics developed by any particular professional organization, trade association, or credentialing body. An adoption and/or enforcement of any professional organization's code of ethics, in whole or in part, would serve as an official endorsement of that organization and its individual members' interests.

The AICPA recognizes that the existing frameworks of the professional organizations may not specifically address every rule suggested in the Commission's proposal. In such situations, we recommend the Commission work directly with those organizations to resolve any differences. The AICPA's Code of Conduct addresses such differences by requiring members to consult, if applicable, the ethical standards of his or her state CPA society, state board of accountancy, the Securities and Exchange Commission, and any other governmental agency.

The AICPA appreciates your consideration of our comments and would be pleased to provide any additional information to further explore the issues and opportunities proposed in the Investment Advisor Code of Ethics.

Sincerely,



Joel H. Framson, CPA/PFS, CFP
Chair, Personal Financial Planning Executive Committee
American Institute of Certified Public Accountants

⁵ See amended Exchange Act Rule 13a-15(c) or 15d-15(c), amended Item 15 of Form 20-F and amended General Instruction (B) to Form 40-F.