

Department of Financial Protection and Innovation

Attn: Diana Pha, Regulations Coordinator, Legal Division
651 Bannon Street, Ste. 300
Sacramento, CA 95811

April 3, 2026

Subject: Comments on Proposed Regulations (Page 28) [PRO 05-17]

Dear Ms. Pha,

I am writing to respectfully submit comments regarding the proposed regulations, specifically those outlined on page 28.

Overall, I would like to express my appreciation for the care and consideration reflected in the proposed framework. The regulations, as a whole, appear thoughtful and balanced in their intent. I respectfully note that the only provisions for which I have concerns are the following two sections on page 28. For ease of reference, I have highlighted the specific language below:

(r) Engaging in any conduct or act that has the appearance or effect of intimidating the investment adviser’s client or any representative of the Commissioner.

(s) Failing to fully disclose documents or information during an examination or investigation conducted by the Commissioner.

With respect to subsection (r), I would like to share a concern regarding the clarity and practical application of this provision. As currently drafted—prohibiting conduct that has the “appearance or effect of intimidating” a client or representative of the Commissioner—the standard appears inherently subjective. Unlike more concrete requirements, such as record retention obligations defined by a specific time period, this language may make it difficult for regulated parties to determine in advance what conduct would constitute compliance.

Because this provision depends not only on whether a specific act occurred but also on how that act may later be interpreted (i.e., whether it is perceived as intimidating or having the appearance of intimidation), it introduces a significant degree of uncertainty. This may make it challenging for investment advisers to confidently assess, in advance, whether their conduct complies with the rule.

It may be helpful to consider whether more precise or illustrative language could be incorporated. For example, identifying specific forms of prohibited conduct—such as explicit threats of physical harm or coercive actions tied to the exercise of legal rights—could provide clearer guidance. If the Department has observed particular conduct that this provision is intended to address, articulating those examples would allow regulated parties to understand boundaries of permissible behavior and assess compliance more objectively.

Greater specificity may also help ensure consistency with constitutional principles requiring that laws provide fair notice and be applied consistently. The Fourteenth Amendment to the United States Constitution provides that “No state shall...deny any person within its jurisdiction equal protection of the laws,” and Article I, Section 7 of the California Constitution similarly provides that a person “may not be deprived of...equal protection of the laws.” A key principle underlying these provisions is that laws should be sufficiently clear so that individuals and entities can understand, from the plain text, in advance, what conduct is required or prohibited.

Where a rule depends heavily on subjective interpretation—particularly where compliance turns on how conduct may later be characterized—it may be difficult for regulated parties to determine in advance whether they are complying. By contrast, standards that focus on clearly defined actions allow for a more objective determination, where the primary question is whether a specific act occurred.

By way of illustration, California law addressing criminal threats provides an example of how serious misconduct can be defined with objective, concrete elements. This demonstrates a model for drafting rules with clear, identifiable criteria. For reference, see this explanation of California Penal Code Section 422 on an attorney’s website.

“To prove that someone is guilty of making criminal threats, a prosecutor must be able to establish the following elements:

1. The defendant willfully threatened to unlawfully kill or unlawfully cause great bodily injury to another person.
2. The defendant made the threat orally, in writing, or via electronic communication.
3. The defendant intended that his or her statement be understood as a threat.
4. The threat was so clear, immediate, unconditional, and specific that it communicated to the other person a serious intention and the immediate prospect that the threat would be carried out.
5. The threat actually caused the other person to be in sustained fear for his or her own safety or for the safety of his or her immediate family.
6. The other person’s fear was reasonable under the circumstances.”

<https://www.losangelescriminallawyer.pro/california-penal-code-section-422-pc-criminal-threats.html>

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=422.&lawCode=PEN

This example shows how an otherwise ambiguous act—such as “being threatening or intimidating”—can be broken into defined, objective elements that regulated parties can clearly understand and make sure to avoid. I provide this as a guide, with the utmost respect, to show how other laws in California achieve their goals while staying constitutionally compliant.

With respect to subsection (s), I would also like to raise a concern regarding the breadth of the current language. As drafted—requiring full disclosure of documents or information during an examination or investigation—the provision could be interpreted to extend beyond materials that fall within the Commissioner’s jurisdiction or beyond what is otherwise required under applicable law.

For example, some regulated individuals may operate in multiple professional capacities (such as investment advisory, tax preparation, or legal services), each governed by distinct legal and ethical obligations. In such circumstances, a broad requirement to disclose all documents or information could place a regulated party in the position of choosing between compliance with this provision and adherence to other legal duties, such as client confidentiality, privacy obligations, or protections like attorney-client privilege.

Documents unrelated to investment advisory services—such as tax records—or materials protected by attorney-client privilege may fall outside the intended scope of this regulation. It would seem neither appropriate nor intended that compliance with this provision would require disclosure of such materials, particularly where doing so could conflict with other legal obligations or compromise client rights.

In light of these considerations, it may be helpful to more clearly define the scope of the disclosure requirement. One potential approach would be to tie the obligation explicitly to materials required under existing legal frameworks. For example, the provision could be revised to read:

“(s) Failing to fully disclose documents or information during an examination or investigation conducted by the Commissioner if required under the books and records sections of these rules or the Corporate Securities Law of 1968.”

Clarifying the provision in this manner may help ensure it operates within well-established legal boundaries, while still supporting the Department’s oversight and enforcement functions. It would also provide clearer guidance to regulated parties and help avoid unintended conflicts with other areas of law.

Thank you for your time and careful consideration of these comments. I sincerely appreciate the Department’s practice of seeking input from industry participants, which fosters collaboration in creating a regulatory environment that both protects customers in California and ensures compliance with constitutional requirements and practical, workable standards.

Sincerely,
Daniel Harris