REPORT ON OBJECTIVES FISCAL YEAR 2015

Office of the Investor Advocate

U.S. SECURITIES AND EXCHANGE COMMISSION

The Office of the Investor Advocate was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as codified under Section 4(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78d(g).

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON OBJECTIVES

FISCAL YEAR 2015

THE OFFICE OF THE INVESTOR ADVOCATE was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), as codified under Section 4(g) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78d(g). Exchange Act Section 4(g)(2)(A)(ii) provides that the Investor Advocate be appointed by the Chair of the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") in consultation with the other Commissioners and that the Investor Advocate report directly to the Chair.[1] On February 24, 2014, SEC Chair Mary Jo White appointed Rick A. Fleming as the Commission's first Investor Advocate.

Exchange Act Section 4(g)(6) requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.[2] A Report on Objectives is due not later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[3] The instant report is the Investor Advocate's first Report on Objectives. It contains a summary of the Investor Advocate's primary objectives for Fiscal Year 2015, beginning October 1, 2014.

A Report on Activities is due no later than December 31 of each year.[4] This report shall describe the activities of the Investor Advocate during the immediately preceding fiscal year. Among other things, the report must include information on steps the Investor Advocate has taken to improve the responsiveness of the Commission and self-regulatory organizations ("SROs") to investor concerns, a summary of the most serious problems encountered by investors during the reporting period, identification of Commission or SRO action that was taken to address those problems, and recommendations for administrative and legislative actions to resolve problems encountered by investors.[5] The first such report will be filed by December 31, 2014, and will describe the activities of the Office of the Investor Advocate from its inception on February 24, 2014, through the remainder of Fiscal Year 2014, ending September 30, 2014.

Disclaimer: Pursuant to Section 4(g)(6)(B)(iii) of the Exchange Act, 15 U.S.C. § 78d(g)(6)(B)(iii), this Report is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission, or the Office of Management and Budget. Accordingly, the Report expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for the Report and all analyses, findings, and conclusions contained herein.

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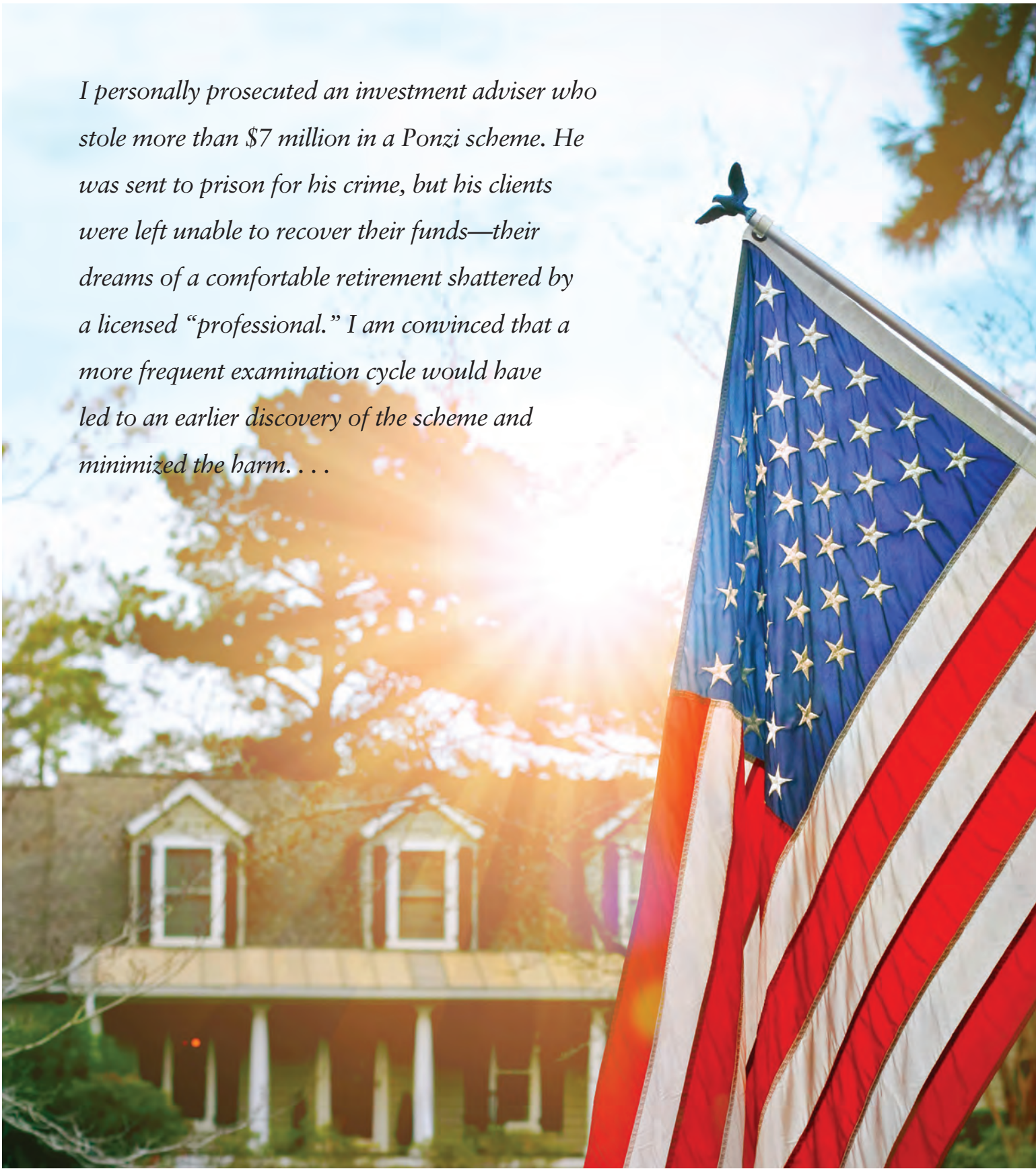


I personally prosecuted an investment adviser who stole more than $7 million in a Ponzi scheme. He was sent to prison for his crime, but his clients were left unable to recover their funds—their dreams of a comfortable retirement shattered by a licensed "professional." I am convinced that a more frequent examination cycle would have led to an earlier discovery of the scheme and minimized the harm. . . .

MESSAGE FROM THE INVESTOR ADVOCATE

On February 24, 2014, the Office of the Investor Advocate (the "Office") was created at the Securities and Exchange Commission when Chair Mary Jo White swore me in to serve as the Commission's first Investor Advocate. It is my privilege to serve alongside the thousands of other dedicated employees at the Commission who spend each day protecting investors.

CORE FUNCTIONS

The Office has three core functions. First, we will work to ensure that the voices of investors are heard as decisions are being made within the Commission, at self-regulatory organizations ("SROs"), and in Congress. As more fully described in this Report, the scope of our statutory mandate is quite broad. We are expected not only to monitor current policy initiatives, but also to identify problems that investors have with investment products and financial service providers and to propose legislation or regulations that promote the interests of investors.

Another core function of the Office will be the work of an Ombudsman. Pursuant to Section 4(g)(8) of the Securities Exchange Act of 1934, the Investor Advocate must appoint an Ombudsman within 180 days after the Investor Advocate's appointment. The Ombudsman will act as a liaison to resolve problems that retail investors may have with the Commission or with an SRO.

The Office will also provide staff and operational support for the SEC's Investor Advisory Committee (the "Committee" or the "IAC"), a group established by Section 911 of the Dodd-Frank Act to promote investor confidence and protect investors' interests. The Investor Advocate is a statutory member of the IAC and participates in its activities.

OBJECTIVES FOR FISCAL YEAR 2015

The primary objectives of the Office for Fiscal Year 2015 will reflect our three core functions. For example, we will support the work of the IAC in a variety of ways in the coming year. We will participate in subcommittee conference calls, assist in connecting the IAC with subject matter experts at the Commission, prepare minutes, and make all of the arrangements for in-person Committee meetings. As vacancies occur on the Committee, we will also process the appointments of new members.

Once selected, the Ombudsman must assess the various channels in which investors currently communicate with the Commission and determine which of those communications should be routed to the Ombudsman. The Ombudsman must establish and implement systems that prescribe how future complaints are to be made, received, and acted upon, including the scope and manner of formal investigations and informal resolutions.

As a routine matter, the Office will review rulemakings that the Commission and SROs propose, in order to ensure that the proposals give appropriate consideration to the needs of investors. We will strive to engage in the rulemaking process early on, while concepts are still developing, instead of waiting to comment upon finished proposals.

In addition to reviewing rulemakings as they occur, we will be forward-looking and attempt to build momentum for reforms that benefit investors. However, with an initial staff of six employees, and given the broad scope of policy issues impacting investors, it seems prudent to narrow our focus to a manageable number of issues in which we can develop expertise and provide a strong voice for investors. Toward this end, we have developed a *Policy Agenda for Fiscal Year 2015* that is described in greater detail in this Report.

In developing our policy agenda, we have been mindful of the recommendations already made by the IAC. Given the resource constraints of the Office, we do not wish to duplicate the work of the Committee. Therefore, where the IAC has spoken to an issue, we are less likely to address that issue independently. However, because those issues are important to investors and would logically be a part of the Office's policy agenda, we will spotlight the recommendations of the IAC in our reports to Congress. Accordingly, you will find in this Report a list of the IAC's official recommendations to the Commission, along with a summary of the Commission's response to each IAC recommendation.

FIRST RECOMMENDATION OF THE INVESTOR ADVOCATE

By June 30 of each year, the Investor Advocate is required to submit a report to Congress outlining objectives for the coming fiscal year (the "Report on Objectives"). By December 31, the Office must submit a report on its activities for the previous fiscal year (the "Report on Activities"). The Report on Activities must include "recommendations for such…legislative actions as may be appropriate to resolve problems encountered by investors."

Although our first Report on Activities is not due until December 31, we include within this inaugural Report on Objectives a recommendation to address a substantial and continuing risk to investors. Specifically, we recommend that Congress provide sufficient resources to the SEC to conduct an adequate number of investment adviser examinations.

While working as General Counsel for the Office of the Kansas Securities Commissioner, I personally prosecuted an investment adviser who stole more than $7 million in a Ponzi scheme. He was sent to prison for his crime, but his clients were left unable to recover their funds—their dreams of a comfortable retirement shattered by a licensed "professional." I am convinced that a more frequent examination cycle would have led to an earlier discovery of the scheme and minimized the harm, and the State of Kansas subsequently enhanced its examination program to deter such misconduct in the future.

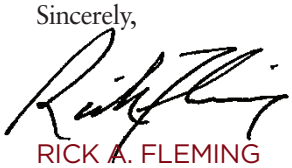
Investors need a similar enhancement today at the federal level to provide for more frequent examinations of SEC-registered investment advisers. While most advisers observe the highest standards of integrity, it is difficult for the Commission to detect less ethical behaviors when the Commission examines only 9 percent of its registrants each year. As you read this, it is quite possible—even likely—that investors somewhere in this country are being defrauded by an unscrupulous investment adviser whose crimes have not yet come to light. Other investors continue to suffer abuse through various unethical practices, including excessive fees, excessive trading, and undisclosed conflicts of interest. More frequent compliance examinations will allow the SEC to halt these types of activities sooner and will provide a stronger deterrent to advisers who might otherwise succumb to the temptation to steal or engage in unethical practices.

As discussed herein, this issue presents a rare convergence of interests, where both the regulator and the regulated generally agree on the problem and the solution. All that is needed is Congressional action.

CONCLUSION

It is my honor to submit this first Report on Objectives on behalf of the Office of the Investor Advocate. I would be pleased to answer questions from Members of Congress.

Sincerely,



RICK A. FLEMING
Investor Advocate

OBJECTIVES OF THE INVESTOR ADVOCATE

The Investor Advocate is responsible for performing several enumerated statutory functions. The objectives of the Investor Advocate for Fiscal Year 2015 are to staff the Office of the Investor Advocate and to begin meeting the statutory purposes of the Office, as set forth in Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4).

By statute, the Investor Advocate shall perform the following functions:

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with SROs;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.

ASSISTING RETAIL INVESTORS

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.[6] As discussed below, the Investor Advocate will appoint an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.[7] In carrying out these duties, the Ombudsman is authorized to "utilize personnel of the Commission to the extent practicable."[8]

IDENTIFYING AREAS IN WHICH INVESTORS WOULD BENEFIT FROM REGULATORY CHANGES

Exchange Act Section 4(g)(4)(B) authorizes the Investor Advocate to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.[9] This is a broad mandate. It enables the Investor Advocate to examine the entire regulatory scheme, including existing rules and regulations, to identify those areas that could be improved for the benefit of investors. For example, the Investor Advocate may look at the rules and regulations governing existing equity market structure to determine whether any changes would benefit investors. Similarly, the Investor Advocate may review current municipal market practices to

evaluate whether any changes might benefit investors. These concerns are discussed in greater detail in the section entitled *Policy Agenda for Fiscal Year 2015*.

IDENTIFYING PROBLEMS WITH FINANCIAL SERVICE PROVIDERS AND INVESTMENT PRODUCTS

Exchange Act Section 4(g)(4)(C) requires the Investor Advocate to identify problems that investors have with financial service providers and investment products.[10] The Investor Advocate will monitor investor inquiries and complaints, SEC and SRO staff reports, enforcement actions, and other data to determine which financial service providers and investment products may be problematic.

ANALYZING THE POTENTIAL IMPACT ON INVESTORS OF PROPOSED RULES AND REGULATIONS

Exchange Act Section 4(g)(4)(D) directs the Investor Advocate to analyze the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs.[11] As a matter of routine, therefore, the Office will review rulemakings of interest to investors. It will also communicate with investors and their representatives to determine the potential impact on investors of proposed rules.

To fulfill the dual statutory mandate of analyzing the potential impact of proposed rules and identifying areas in which investors would benefit from changes to the rules, the Investor Advocate considers it imperative to be involved in rulemakings at the earliest stage. Becoming involved in a rulemaking at inception is vital if the Investor Advocate is to play a constructive role on behalf of investors in the rulemaking.

PROPOSING APPROPRIATE CHANGES TO THE COMMISSION AND TO CONGRESS

Exchange Act Section 4(g)(4)(E) provides that, to the extent practicable, the Investor Advocate may propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.[12]

Consistent with Exchange Act Section 4(g)(4)(E), the Investor Advocate has identified a serious risk to investors that warrants immediate attention. Specifically, the Investor Advocate has identified significant capacity challenges in the Commission's registered investment adviser examination program that, if not addressed immediately, will continue to be detrimental to the interests of investors. To mitigate this problem and promote the interests of investors, the Investor Advocate proposes that Congress approve adequate funding for the SEC, and for the SEC's Office of Compliance Inspections and Examinations in particular, to provide resources for more frequent on-site examinations of SEC-registered investment advisers. The *Recommendation of the Investor Advocate* section of this Report contains a detailed discussion of this problem and the recommended solution.

APPOINTING AN OMBUDSMAN AND STAFFING THE OFFICE OF THE INVESTOR ADVOCATE

The Investor Advocate may retain or employ various staff "as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office."[13] The Investor Advocate is also responsible for appointing an Ombudsman to: (i) act as a liaison between the Commission

and any retail investor in resolving problems that retail investors may have with the Commission or with SROs; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[14] The Investor Advocate must appoint the Ombudsman not later than 180 days following the date of the Investor Advocate's appointment.[15]
In the coming year, the Investor Advocate will continue to hire staff, including the Ombudsman. In addition, the Investor Advocate will assist the Ombudsman in implementing systems for the receipt and processing of investor inquiries.

RULEMAKING

Section 915 of the Dodd-Frank Act mandates the adoption of a rule that relates to the Office of the Investor Advocate.[16] This mandate, as codified in Exchange Act Section 4(g)(7), requires the Commission, by regulation, to establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than three months after the date of such submission.[17] In the coming year, the Office will work with the SEC's Office of the General Counsel to initiate this required rulemaking.

SUPPORTING THE INVESTOR ADVISORY COMMITTEE

Exchange Act Section 39, as amended by Section 911 of the Dodd-Frank Act, establishes the Investor Advisory Committee.[18] As discussed in greater detail in the section entitled *Summary of IAC Recommendations and SEC Responses*, the purpose of the Committee is to advise and consult with the Commission on regulatory priorities, issues impacting investors, initiatives to protect investors, and related matters.

By statute, the Investor Advocate is a member of the IAC.[19] Accordingly, the Investor Advocate will participate in the activities of the Committee. In addition, the Office will provide staff and operational support to the IAC.

POLICY AGENDA FOR FISCAL YEAR 2015

The statutory mandate for the Office of the Investor Advocate is broad, but our resources are limited. Because we will be unable to examine every possible issue in depth, it will be necessary to narrow our focus to a manageable number of issues so that we can effectively advise policymakers and make the greatest impact for investors.

After discussions with numerous knowledgeable individuals, both inside and outside the Commission, and after due consideration, the Investor Advocate has determined that the Office should focus on the following issues during Fiscal Year 2015: equity market structure, investor flight, municipal market reform, cybersecurity, effective disclosure, and elder abuse. Other issues undoubtedly will arise that require the attention of the Office, but these issues will remain on our policy agenda.

EQUITY MARKET STRUCTURE

The secondary market for U.S.-listed equities has become dispersed and complex, partly as a result of the decades-long transition from a market structure dominated by manual trading to a market structure characterized primarily by automated trading.[20] The evolution of technologies for generating, routing, and executing orders has enhanced the speed, capacity, and sophistication of the trading functions that are available to market participants.[21] In addition, trading volume has become dispersed among many trading centers that compete for order flow in the same stocks, and trading centers offer a wide range of services designed to attract different types of market participants with varying trading needs.[22]

Regulatory actions have contributed to changes in equity market structure—for example, Regulation NMS (adopted in 2005),[23] the Order Handling Rules (adopted in 1996),[24] and certain enforcement actions. In particular, the equity market has evolved significantly since the adoption of Regulation NMS, which was intended to modernize and strengthen the regulatory structure of the U.S. equity markets.[25] Regulation NMS was also intended to "protect investors, promote fair competition, and enhance market efficiency."[26]

To understand the effects of the transformation in equity trading more completely, the Commission has been conducting a comprehensive review of equity market structure.[27] Like others at the Commission, the Office of the Investor Advocate is sensitive to the fact that market structure issues are complex and require a broad understanding of statutory requirements, economic principles, and practical trading considerations.[28] However, while we recognize that competing interests must be balanced for markets to work efficiently, the Office will focus on one overriding concern as we examine these issues: is the equity market today fair for investors?

Fairness is integral to the SEC's three-part mission: (1) to protect investors; (2) to maintain fair, orderly, and efficient markets; and (3) to facilitate capital formation.[29] Consistent with the second prong of the SEC's mission, the relevant question for the Investor Advocate is not simply whether the equity market is better today than before the adoption of Regulation NMS, but rather, whether the equity market is functioning as fairly and efficiently as possible today. To examine the fairness issue, the Office may consider a number of questions, including:

- How to define a fair market—what constitutes a fair market?
- Do investors perceive the current equity market to be fair?
- Are any particular elements of the current equity market unfair to investors?
- What are the negative impacts on investors from the current equity market structure?
- Do the incentives inherent in the current equity market structure favor or disfavor individual investors?
- On balance, would any proposed changes help or harm individual investors?

By evaluating answers to these and related questions, the Office will be better equipped to propose and support measures designed to benefit investors and the equity market as a whole.

INVESTOR FLIGHT

Concurrent with our evaluation of the equity market's fairness, the Office will examine a related issue. We will explore whether individual investors are abandoning the equity market because they are wary of it. This question has been a recurring theme in the media during the past few years, with some news reports describing persistent investor anxiety about investing in equities[30] and other media sources claiming that the perceived phenomenon of investor flight is a myth.[31] Some acknowledge that a number of retail investors have liquidated their individual stock holdings, but they argue that those investors are reinvesting their funds into target date funds and exchange-traded funds, thereby participating indirectly in the equity market.[32] Nonetheless, a January 2014 Gallup survey found that about half of investors were wary of investing in the stock market at the time—despite recent market gains.[33] Moreover, the same survey found that the percentage of American households that own securities (either directly or through a mutual fund or self-directed retirement account) has declined from approximately 65 percent in April 2007 to approximately 54 percent in January 2014.[34] If true, this decline in individual investment could constitute a significant drag on capital formation and the U.S. economy.

In addition, nearly three-quarters of those polled in an April 2014 Bankrate monthly survey indicated that they were not more inclined to invest in the stock market despite persistent low interest yields in savings accounts and certificates of deposit.[35] Another recent Gallup survey found that Americans tend to believe that real estate is the best option for long-term investments, compared to stocks and gold.[36] Indeed, that Gallup survey found that lower-income Americans (those earning less than $30,000 annually) tend to believe that gold is the best long-term investment choice, followed by real estate and savings accounts or certificates of deposit.[37]

There are obvious reasons for investor withdrawal from the equity market, many of which are related to the recent financial crisis. With the loss of invested assets, high unemployment, and the housing market collapse that contributed to the deterioration of the so-called "wealth effect," investors may be unable to participate in the market as they have done so in the past. Yet there may exist deeper and less apparent reasons—beyond the anecdotal and the obvious—for investor flight from the equity market.

In light of conflicting perceptions of investor behavior, the Office will analyze additional data to determine whether individual investors have in fact retreated from the equity market. To the extent that individual investors have fled the market, the Office will examine the reasons for that withdrawal and determine what policies, if any, might be implemented to encourage those investors to return to the equity market.

The Office will also support the Commission in its continuing efforts to address negative impacts on individual investors in the equity market. We will collaborate with the Commission to pursue more immediate measures to benefit investors while we study longer-term approaches to remedying market imbalances that disadvantage individual investors.

MUNICIPAL MARKET REFORM

On July 31, 2012, the Commission issued a Report on the Municipal Securities Market (the "Municipal Market Report").[38] According to SEC staff estimates, the value of outstanding municipal bonds totaled $3.7 trillion in 2011.[39] Remarkably, about 50.2 percent of municipal securities were held *directly* by individual investors as of December 31, 2011, and another 25 percent were owned indirectly by individual investors through mutual funds, money market funds, or closed end funds and exchange-traded funds.[40] Municipal securities can be an important part of investors' retirement plans and a valuable source of funds for local projects that affect investors' quality of life in their communities.

The Municipal Market Report explains that the municipal securities market has traditionally been considered a "buy-and-hold" market because many retail investors hold municipal securities until maturity. Secondary trading is conducted in a "decentralized over-the-counter dealer market that is illiquid and opaque."[41] In these secondary trades, retail investors have limited access to pricing information, and the compensation paid to dealers may not be readily apparent to the investors.[42]

To address these and other shortcomings in the municipal securities markets, the Municipal Market Report issued a number of recommendations. For example, it recommended that the Municipal Securities Rulemaking Board should consider requiring municipal bond dealers to seek "best execution" of customer orders and disclose markups or markdowns on confirmations for riskless principal transactions.

The Office will work with others at the Commission and relevant SROs to encourage reforms designed to benefit investors in the municipal securities markets. To the extent that legislation is required to improve disclosures and practices in this market, the Office will make recommendations to Congress as appropriate.

DATA PROTECTION AND CYBERSECURITY

As markets and financial services have become increasingly automated, investor protections have not kept pace with technological evolution. As a result, investors are now at risk in ways that were not even contemplated one or two decades ago. Markets have been whipsawed by technological "glitches" and other anomalies, with investors subjected to large price swings without economic justification.[43] Moreover, because hackers and electronic terrorists present a constant threat to the financial security and privacy of investors, financial service providers and market participants must be vigilant in safeguarding investors' assets and private information.

During Fiscal Year 2015, the Office will survey the efforts of the Commission, FINRA, the stock exchanges, alternative trading systems, and other market participants to protect investors. In particular, we will evaluate the impact of Regulation SCI as it is implemented[44] and look for other improvements that would benefit investors and protect them from cyber threats.

EFFECTIVE DISCLOSURE

Disclosure is at the very heart of our system of securities regulation in the United States. In the offer or sale of securities, all material facts must be disclosed to investors so they can make fully informed investment decisions. Enforcing these disclosure requirements is a critical element of investor protection.

Ideally, issuers and sellers of securities should provide information to investors in a manner that enhances investors' ability to understand it. Full and accurate information should be provided in a meaningful way, without unnecessary repetition and without burying important information within less important disclosures.

In December 2013, the Commission issued the Report on Review of Disclosure Requirements in Regulation S-K (the "S-K Report"), a report mandated by Congress under the Jumpstart Our Business Startups Act (the "JOBS Act").[45] The S-K Report describes the evolution of the disclosure requirements within Regulation S-K and recommends a reevaluation of those disclosure requirements. The S-K Report recommends potential issues for further study and identifies specific areas of Regulation S-K that may benefit from further review.

On April 11, 2014, the SEC's Division of Corporation Finance announced a disclosure reform initiative that builds upon the S-K Report.[46] The initiative will begin with a review of the business and financial disclosures that are reflected in periodic or current reports (Forms 10-K, 10-Q, and 8-K). Commission staff will determine whether the requirements of Regulations S-K and S-X can be updated to reduce the costs and burdens to issuers while continuing to provide material information and eliminate duplicative disclosures. In the future, Commission staff will also consider ways to update and modernize disclosures that form the basis for most proxy disclosure.

In the next year, the Office will assist the Division of Corporation Finance and others in the exploration of potential disclosure reforms. Among other things, we will help the staff determine what information investors find most useful, whether technology can be used to communicate information more effectively, whether additional material information should be disclosed, and the impact of proposed changes on investors.

ELDER ABUSE

As investors age, some begin to suffer from diminished capacity due to dementia or other health conditions.[47] After building assets for a lifetime, these investors may become vulnerable to financial abuse not only from scam artists, but also from unethical caregivers, family members, and financial service providers.

As the Baby Boomer generation retires, this problem will likely increase. This new generation of retirees will probably live longer than their parents, making diagnoses of diminished capacity more common. These retirees will also exercise more direct control of their retirement assets than preceding generations because, in the past few decades, the number of defined benefit retirement

plans has fallen while the number of defined contribution plans has grown.[48] As of 2011, assets within defined contribution plans neared $4 trillion,[49] and this concentration of wealth will be a tempting target for unscrupulous individuals seeking to exploit vulnerable seniors.

In the coming fiscal year, the Office will study this issue in greater depth. We will evaluate the current initiatives underway at the Commission, at SROs, and at other state and federal agencies to protect seniors from financial abuse. We will supplement those efforts by promoting policies to benefit investors with diminished capacity. We will look for ways to equip financial service professionals with better tools to protect vulnerable clients, as well as ways to prevent abuse by rogue financial professionals who take advantage of clients.

RECOMMENDATION OF THE INVESTOR ADVOCATE

Exchange Act Section 4(g)(4)(E) states that one of the functions of the Investor Advocate is to propose to Congress any legislative changes that may be appropriate to mitigate problems encountered by investors. In addition, Exchange Act Section 4(g)(6)(B) requires the Investor Advocate to submit a Report on Activities by December 31 of each year, and the Report on Activities must include "recommendations for such…legislative actions as may be appropriate to resolve problems encountered by investors."[50] Although our first Report on Activities is not due until December 31, 2014, we nevertheless include within this inaugural Report on Objectives (due June 30 each year) a recommendation to address a substantial and continuing risk to investors:

> *Congress should immediately appropriate funds to increase the number of SEC staff who examine registered investment advisers, and should authorize the SEC to collect fees from investment advisers in order to create a more stable and scalable source of revenue for investment adviser examinations in future years.*

THE PROBLEM ENCOUNTERED BY INVESTORS

The problem for investors is well known and easily understood. Over the past decade, the number and complexity of registered investment advisers has increased dramatically, while the number of SEC examiners has remained relatively flat.

The number of SEC-registered advisers has grown by approximately 40 percent over the past decade to nearly 11,500 today. The amount of assets managed by investment advisers is on an even steeper ascent, going from $20 trillion a decade ago to an estimated $55 trillion by the end of Fiscal Year 2015.[51]

A recent transfer of mid-size advisers from SEC to state registration had less impact than expected. Fewer advisers than anticipated made the switch from SEC to state registration,[52] and the SEC simultaneously took on new responsibilities for the registration and oversight of private fund advisers, municipal advisors, and securities-based swap participants.[53]

As the number of investment advisers has grown, so too has their complexity. A significant percentage of SEC-registered advisers have more than $1 billion in assets under management, and advisers increasingly are part of complex "families" of financial services companies with integrated operations.[54] Advisers are using new and complex products, including derivatives and certain structured products, and also are increasing their use of technologies that facilitate such activities as high-frequency and algorithmic trading.[55]

The increasing size, sophistication, and complexity of investment advisers make SEC examinations more challenging and time-consuming. Yet, SEC resources devoted to examinations have not reflected the magnitude of the changes in the industry. In the past decade, the staff in the SEC's Office of Compliance Inspections and Examinations ("OCIE") has grown only about 10 percent, from 825 full-time equivalents in Fiscal Year 2004 to 914 today.[56] As a result, the SEC examined only about 9 percent of registered investment advisers in Fiscal Year 2013.[57] This equates to a frequency of approximately once every 11 years, a rate that Congress should find unacceptable.

AN AGREED-UPON SOLUTION

There is a straightforward solution to this problem. The SEC needs additional resources to bolster its exam program. This solution has garnered an extraordinary level of support not only from the Commission itself, but also from a host of industry associations.[58]

The SEC has long sought additional resources to enhance its examination program. For example, the January 19, 2011, Study on Enhancing Investment Adviser Examinations conducted pursuant to Section 914 of the Dodd-Frank Act (the "Section 914 Study") concluded that the SEC's investment adviser examination program "requires a source of funding…that is sufficiently stable to prevent adviser examination resources from periodically being outstripped by growth in the number of registered investment advisers."[59] More recently, the SEC submitted a Fiscal Year 2015 budget request to fund 316 additional staff positions in the examination program of OCIE.[60]

Notably, industry associations comprised of SEC-registered investment advisers have supported an increase in funding for their regulator. For example, the following organizations submitted comments to the Commission in response to the Section 914 Study:

- The **Investment Adviser Association ("IAA")**, which represents SEC-registered investment adviser firms and has a membership of more than 500 firms that collectively manage in excess of $9 trillion:

  > Consistent with our longstanding position, we continue to strongly support giving the Commission the resources it needs to conduct an effective and appropriate examination and enforcement program for registered advisers.[61]

- The **Financial Planning Coalition**, a coalition consisting of the Certified Financial Planner Board of Standards, Inc. ("CFP Board"), the Financial Planning Association ("FPA"), and the National Association of Personal Financial Advisors ("NAPFA"), who together represent over 75,000 financial planners:

  > The Coalition strongly urges the Commission to seek, and Congress to provide the Commission with, all the resources it needs to enhance its current direct oversight of Commission-registered investment advisers.[62]

- The **CFA Institute**, a global professional association of nearly 107,000 investment analysts, advisers, portfolio managers, and other investment professionals:

  > CFA Institute believes that the best, most efficient manner of enhancing investment adviser examinations involves increased Congressional funding for the SEC that would allow it to meet its regulatory responsibilities for oversight of registered investment advisers ("RIAs").[63]

It is also important to note that ***the industry is willing to pay the price for increased examinations***. As recently as December 4, 2013, a coalition of groups including the IAA, FPA, CFP Board, and NAPFA publicly supported legislation to authorize the SEC to collect an annual "user fee." This fee would be collected from registered investment advisers in order to increase the frequency of investment adviser examinations.[64]

The SEC Investor Advisory Committee has endorsed the user fee model. Warning that the current frequency of exams is "simply inadequate to detect or credibly deter fraud," the IAC called for user fees to provide a scalable source of funding.[65] On November 22, 2013, the IAC recommended that the SEC seek Congressional authority to impose user fees on SEC-registered investment advisers to fund an enhanced examination program.

WHY INVESTMENT ADVISER EXAMINATIONS ARE IMPORTANT TO INVESTORS

Ordinary Americans are increasingly turning to investment advisers for help in navigating financial markets and investment products that have grown in complexity, and investment advisers play an important role in their clients' economic security and mobility. Investment advisers manage the investment assets for millions of middle-class Americans,[66] including retirement funds, children's college funds, and money for down payments on their homes. These assets affect the hopes and dreams of investors.

The SEC's national examination program produces results that matter for individual investors. In Fiscal Year 2013, 35 percent of OCIE examinations resulted in a "significant finding" of a practice that could cause harm to clients or involved recidivist misconduct.[67] Of all exams, 13 percent were deemed serious enough to warrant a referral to the SEC Division of Enforcement.[68] Typical referrals involved misappropriation of funds; conflicts of interest, such as undisclosed arrangements; brokerage and investment practices that favor certain clients over others; trading ahead of clients; and false and misleading advertisements or performance calculations.

More often, exams identify technical deficiencies that are corrected without formal action. In Fiscal Year 2013, for example, 80 percent of examinations resulted in deficiency letters.[69] Deficiencies are often corrected by amending or adding to written compliance policies and procedures, enhancing disclosures to clients, and so on.[70] In some cases, the exams identify issues related to the calculation of advisory fees, including unintentional billing errors. These exams result in substantial sums being returned to investors, even without a referral to the SEC Division of Enforcement.

RECOMMENDATION: INCREASE FUNDING TO ENHANCE INVESTMENT ADVISER EXAMINATION PROGRAM

On behalf of investors, the Office of the Investor Advocate adds its voice in support of greater resources to enhance the SEC's investment adviser examination program. A more frequent examination cycle would allow SEC staff to identify intentional and unintentional violations sooner, which would minimize harm to investors. In addition, a greater regulatory presence would act as a deterrent to future fraudulent and abusive conduct.

Optimally, we believe that SEC-registered investment advisers should be examined at least every three years on average. OCIE should have the flexibility to examine higher-risk firms more often, and no firm should go longer than five years without a comprehensive examination.

We recommend that Congress appropriate the needed funds this year so that the Commission can hire more examiners without further delay. We also recommend that Congress authorize the SEC to collect an annual "user fee" from registered investment advisers and to limit the use of those funds to expenses associated with investment adviser examinations.

It will take a significant commitment of resources to go from examining 9 percent of firms per year to coverage of 33 percent per year. In this regard, the SEC budget request appears modest because it would add only 316 positions to the current OCIE staff of 914. However, the enhanced funding would be a major step in the right direction.

The simplest solution to address the resource issue is to approve the SEC's current budget request. This is also the quickest way to get more "boots on the ground." Accordingly, we recommend that Congress appropriate the needed funds this year so that the Commission can hire more examiners without further delay.

However, as the IAC has observed, a more effective long-term solution would be to grant the SEC the authority to assess user fees on investment advisers. This would provide a consistent, scalable source of revenue to protect investors with an adequate level of investment adviser examinations. This would also place the cost of regulation on the industry whose reputation will benefit from the enhanced regulatory presence. Therefore, we also recommend that Congress authorize the SEC to collect an annual "user fee" from registered investment advisers and to limit the use of those funds to expenses associated with investment adviser examinations.

Congress can be assured that the Investor Advocate will monitor the SEC's use of enhanced resources—whether obtained through direct appropriations or user fees—to determine whether those resources are being used appropriately to increase the number of investment adviser examinations and maximize protection for investors.

SUMMARY OF IAC RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[71] The Committee is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than ten or more than twenty members appointed by the Commission. Federally registered lobbyists may not serve on the Committee,[72] and the Commission-appointed members must be selected from among individuals who: (i) represent the interests of individual equity and debt investors, including investors in mutual funds; (ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies; (iii) are knowledgeable about investment issues and decisions; and (iv) have reputations of integrity.[73] The term of service for members of the Committee is four years.[74]

KURT SCHACHT, Chairman
Investor Advisory Committee

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.[75] The statute also requires the SEC to "promptly" issue a public statement assessing each finding or recommendation of the Committee and disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.[76] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[77]

As part of our reports to Congress, the Office intends to report on the IAC recommendations. We will also report on the SEC's responses to the recommendations, which may be communicated in various formats. Frequently, an IAC recommendation pertains to a current rulemaking, in which case the proposing release or the adopting release may constitute the Commission's response. Where an IAC recommendation does not involve a current rulemaking, SEC Chair Mary Jo White has indicated that the Commission will respond with a written statement.[78]

Commission staff—including the Office of the Investor Advocate—are prohibited from disclosing nonpublic information.[79] Therefore, it is important to note that the Commission may be pursuing initiatives that are responsive to IAC recommendations but are not yet public. Those non-public initiatives are not reflected in this report.

Between October 2012 and April 2014, the IAC made eight sets of recommendations. The SEC has taken interim or final action on three of them (involving tick sizes, Title II of the JOBS Act, and target date retirement funds). In addition, Chair White has informed the IAC publicly that Commission staff is working on the remaining IAC recommendations.[80]

CROWDFUNDING

At its meeting on April 10, 2014, the IAC adopted a package of six recommendations for the SEC to strengthen its proposed rules to implement the crowdfunding provisions of the JOBS Act.[81] The Committee stated that its recommendations would better ensure that investors understand the risks of crowdfunding and avoid unaffordable financial losses. Among other things, the Committee recommended that the SEC:

- Adopt tighter limits on the amount of money that investors could invest in crowdfunding;
- Strengthen the mechanisms for the enforcement of the investment limits in order to better prevent errors and evasion;
- Clarify and strengthen the obligations of crowdfunding intermediaries to ensure that issuers comply with their legal obligations; clarify the requirements for background checks; clearly affirm the right of portals to "curate" offerings; and consider a tiered regulatory structure based upon factors such as the size of offering, investment limits, and participation by individuals with a record of securities law violations;
- Enhance the effectiveness of educational materials for investors;
- Replace the proposed definition of electronic delivery with a stronger definition that, at a minimum, requires disclosure of a specific URL where required disclosures can be found; and
- Replace its proposal to eliminate application of the integration doctrine with a narrower approach.

These recommendations relate to proposed rules that are still under consideration.[82] Accordingly, it is anticipated that the SEC's response to the IAC recommendations will be reflected in the adopting release for the final rule.

DECIMALIZATION AND TICK SIZES

In a split vote on January 31, 2014, the IAC adopted a resolution opposing any test or pilot programs to increase the tick sizes in the securities markets.[83] The resolution argued that larger tick sizes would harm retail investors by raising prices and would not improve the research coverage or liquidity of small-cap companies. The resolution urged the SEC to maintain its current policy on decimalization and to focus on other ways to enhance liquidity and capital formation without sacrificing investor protections. However, should the SEC decide to pursue a pilot program of increasing tick sizes, the IAC recommended a short "sunset" on the pilot unless benefits are proven to outweigh the costs; a careful evaluation of costs and benefits to investors, with a particular focus on retail investors; and the piloting of other competition-based measures designed to encourage trading and capital formation.

On June 24, 2014, the Commission directed the national securities exchanges and FINRA to implement a pilot program to test a tick size of 5 cents per share in three groups of securities.

The different groups will measure the impact of other variables, including the minimum price increments and a trade-at requirement. The pilot program will sunset in one year.

LEGISLATION TO FUND INVESTMENT ADVISER EXAMINATIONS

On November 22, 2013, the IAC recommended that the SEC request legislation from Congress that would authorize the Commission to impose user fees on SEC-registered investment advisers to provide a scalable source of funding for more frequent compliance examinations of advisers.[84] The IAC asserted that current practices equate to an approximately 13-14 year examination cycle for SEC-registered investment advisers, which the Committee found inadequate to detect or deter fraud. In support of its recommendation, the IAC noted that the SEC sought direct appropriations in Fiscal Year 2014 to hire more examiners, but the IAC opined that Congress was unlikely to appropriate the funds for this purpose.

The Commission has not taken a formal position on user fees, but its Fiscal Year 2015 budget request identifies increased examinations of investment advisers as a top priority. The request calls for sufficient appropriations to add 316 positions to the examination program in the SEC's Office of Compliance Inspections and Examinations.[85]

BROKER-DEALER FIDUCIARY DUTY

On November 22, 2013, the IAC adopted a set of recommendations encouraging the SEC to establish a fiduciary duty for broker-dealers when they provide personalized investment advice to retail investors.[86] The Committee preferred to accomplish this objective by narrowing the exclusion for broker-dealers within the definition of an "investment adviser" under the Investment Advisers Act of 1940. As an alternative, the Committee recommended the adoption of a rule under Section 913 of the Dodd-Frank Act to require broker-dealers to act in the best interests of their retail customers when providing personalized investment advice, with sufficient flexibility to permit certain sale-related conflicts of interest that are fully disclosed and appropriately managed. In addition, the Committee recommended the adoption of a uniform, plain English disclosure document to be provided to customers and potential customers of broker-dealers and investment advisers. The document would disclose information about the nature of services offered, fees and compensation, conflicts of interest, and the disciplinary record of the broker-dealer or investment adviser.

The SEC's response to these recommendations is pending.

UNIVERSAL PROXY BALLOT

On July 25, 2013, the IAC adopted a recommendation urging the SEC to explore the relaxation of Exchange Act Rule 14a-4(d)(1) (the "bona fide nominee rule") to provide proxy contestants with the option, but not the obligation, to use universal proxy ballots in connection with short slate director nominations.[87] The IAC also encouraged the Commission to hold one or more roundtable discussions on the topic.

The SEC's response to this recommendation is pending.

DATA TAGGING

Also at its meeting on July 25, 2013, the IAC adopted a recommendation for the SEC to promote the collection, standardization, and retrieval of data filed with the SEC using machine-readable data tagging formats.[88] The Committee urged the SEC to take steps to reduce the costs of providing tagged data, particularly for smaller issuers and investors, by developing applications that allow users to enter information on forms that can be converted to machine-readable formats by the SEC. In addition, the IAC recommended that the SEC give priority to the data tagging of disclosures on corporate governance, including information about executive compensation and shareholder voting.

The SEC's response to these recommendations is pending.

TARGET DATE MUTUAL FUNDS

On April 11, 2013, the IAC adopted recommendations for the Commission to revise its proposal regarding target date retirement fund names and marketing.[89] The package of five IAC recommendations pertained to a 2010 SEC proposal that would, among other things, require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time (*i.e.*, an "asset allocation glide path").[90]

As either a replacement for or supplement to the SEC's proposed asset allocation glide path illustration, the IAC recommended that the Commission develop a glide path illustration that would be based on a measure of fund risk. To promote comparability between funds, the IAC recommended the adoption of standard methodologies to be used in glide path illustrations. In addition, the IAC urged the Commission to require clearer disclosure about the risk of loss, the cumulative impact of fees, and the assumptions used to design and manage the funds.

Chair White initially responded to the IAC recommendations with a letter dated November 20, 2013, indicating that the Commission would seek public comment on the IAC proposal.[91] The Commission did so on April 3, 2014, by reopening the comment period to seek public comment on the IAC's recommendation to adopt a risk-based glide path illustration and the methodology to be used for measuring risk.[92]

JOBS ACT: GENERAL SOLICITATION AND ADVERTISING

Title II of the JOBS Act required the SEC to lift the ban on general solicitation and advertising in Rule 506 securities offerings.[93] In addition, Section 926 of the Dodd-Frank Act required the SEC to disqualify "bad actors" from the use of Rule 506.[94]

On October 12, 2012, the IAC adopted a set of seven recommendations related to these statutory mandates.[95] The recommendations were designed to strengthen investor protections and enhance regulators' ability to police the private placement market. In summary, the IAC recommended that the SEC:

- Require all issuers who utilize general solicitation to file a new form or a revised version of Form D;
- Require that all solicitation material be furnished to the SEC;
- Adopt a safe harbor that provides clear and enforceable standards for verification of accredited investor status, and promote reliance on regulated third parties for verification;

- Make the filing of Form D a condition for relying on the exemption, while avoiding undue penalties for inadvertent violations by small, unsophisticated issuers.
- Ensure that any performance claims in solicitation materials are based upon appropriate performance reporting standards;
- Amend the natural persons prong of the accredited investor definition to better reflect a population that has the financial sophistication to analyze the risks in private offerings and/or the wealth to withstand potential losses; and
- Disqualify "bad actors" from the use of Rule 506, as required by Section 926 of the Dodd-Frank Act and as previously proposed by the Commission.[96]

On July 10, 2013, the SEC took three related actions. First, the Commission adopted a final rule permitting general solicitation and advertising in Rule 506 offerings.[97] Second, it adopted a final rule disqualifying offerings involving felons and other bad actors.[98] Third, it proposed an additional rule to enhance the Commission's ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise once the ban is lifted.[99] The Commission has twice sought public comment on the rule proposal, but the proposal has not yet been adopted. Taken together, the two final rules and the proposed rule generally reflect consideration of the IAC recommendations.[100]

END NOTES

1 Exchange Act § 4(g)(2)(A)(ii), 15 U.S.C. § 78d(g)(2)(A)(ii) (2012).

2 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).

3 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).

4 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).

5 *Id.*

6 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).

7 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).

8 Exchange Act § 4(g)(8)(C), 15 U.S.C. § 78d(g)(8)(C).

9 Exchange Act § 4(g)(4)(B), 15 U.S.C. § 78d(g)(4)(B).

10 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).

11 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).

12 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).

13 Exchange Act § 4(g)(3), 15 U.S.C. § 78d(g)(3). In addition to the Investor Advocate and an Ombudsman, the Office of the Investor Advocate currently has authorization to hire four full-time permanent staff.

14 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).

15 Exchange Act § 4(g)(8)(A).

16 Dodd-Frank Wall Street Reform and Consumer Protection Act § 915, 15 U.S.C. § 78d(g).

17 Exchange Act § 4(g)(7), 15 U.S.C. § 78d(g)(7).

18 Exchange Act § 39, 15 U.S.C. § 78pp.

19 Exchange Act § 39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).

20 *See generally* Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010) [75 FR 3594 (Jan. 21, 2010)].

21 *Id*.

22 *Id*.

23 Regulation NMS: Final Rules and Amendments to Joint Industry Plans, Exchange Act Release No. 51808 (June 9, 2005) [70 FR 37496 (June 29, 2005)]. Among other things, Regulation NMS eliminated trade-through protection for manual quotations.

24 Order Execution Obligations, Exchange Act Release No. 37619A (Sept. 6, 1996) [61 FR 48290 (Sept. 12, 1996)].

25 Exchange Act Release No. 51808, *supra* note 23.

26 *Id*. at 37498.

27 *See* Mary Jo White, Chair, SEC, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, June 5, 2014 (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312) (observing that the "largely positive data on broad market quality does not mean, however, that the current market structure is without issues"); Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010) [75 FR 3594, 3596 (Jan. 21, 2010)].

28 *See id*.

29 *See, e.g.*, SEC, http://www.sec.gov/about/whatwedo.shtml.

30 *See, e.g.*, E.S. Browning, *Bond Yields Indicate Worry*, WALL ST. J., June 2, 2014, at C1; Daisy Maxey, *Still Afraid of Stocks? Advisers Try to Lure Clients Back In*, WALL ST. J., May 24-25, 2014, at B8.

31 *See, e.g.*, William Baldwin, *Dumb Idea: Investors are Fleeing Stocks*, Forbes (Mar. 18, 2013), http://www.forbes.com/sites/baldwin/2013/03/18/dumb-idea-investors-are-fleeing-stocks/.

32 *See, e.g.*, Jason Zweig, *Are Retail Investors 'Fleeing' Stocks?*, WALL ST. J., Aug. 27, 2012, http://blogs.wsj.com/totalreturn/2012/08/27/are-retail-investors-fleeing-stocks/; Jason Zweig, *Are Individual Investors Fleeing Stocks? Nope*, WALL ST. J., June 27, 2012, http://blogs.wsj.com/totalreturn/2012/06/27/are-individual-investors-fleeing-stocks-nope/.

33 Art Swift, *Despite High Stock Prices, Half in U.S. Wary of Investing*, Gallup (Jan. 17, 2014), http://www.gallup.com/poll/166886/despite-high-stock-prices-half-wary-investing.aspx.

34 *Id*.

35 Chris Kahn, *April 2014 Financial Security Index charts*, Bankrate (Apr. 21, 2014), http://www.bankrate.com/finance/consumer-index/financial-security-charts-0414.aspx.

36 *See* Rebecca Riffkin, *Americans Sold on Real Estate as Best Long-Term Investment,* Gallup (Apr. 17, 2014) (reporting results from Gallup's April 3-6 Economy and Personal Finances Poll that asked Americans to choose the best option for long-term investments), http://www.gallup.com/poll/168554/americans-sold-real-estate-best-long-term-investment.aspx?version=print.

37 *Id*.

38 SEC, *Report on the Municipal Securities Market*, July 31, 2012, http://www.sec.gov/news/studies/2012/munireport073112.pdf.

39 *Id*. at 5.

40 *Id*. at 12.

41 *Id*. at v.

42 *Id*. at vi-vii.

43 *See, e.g.*, Callie Bost, Sam Mamudi & Eric Lam, *NYSE Computer Error Prompts Cancellation of Almost 20,000 Trades*, Bloomberg, Apr. 30, 2014, http://www.bloomberg.com/news/2014-04-29/nyse-options-markets-cancel-almost-20-000-trades-following-error.html; Matthew Leising, Jeff Wilson & Elizabeth Campbell, *CME Says Some Trading Halted Because of Technical 'Issues,'* Bloomberg, Apr. 8, 2014, http://www.bloomberg.com/news/2014-04-08/cme-says-some-trading-halted-because-of-technical-issues-1-.html; SEC, *Findings Regarding the Market Events of May 6, 2010: Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues*, http://www.sec.gov/news/studies/2010/marketevents-report.pdf.

44 Exchange Act Release No. 69077 (Mar. 8, 2013) [78 FR 18083 (Mar. 25, 2013)].

45 SEC,*Report on Review of Disclosure Requirements in Regulation S-K*, Dec. 2013, http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.

46 Keith F. Higgins, Director, Division of Corporation Finance, SEC, Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting, Apr. 11, 2014 (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370541479332).

47 It should be noted, however, that diminished capacity is not unique to the elderly, and that many elderly people suffer no such impairments.

48 Dep't of Labor, Emp. Benefits Sec. Admin., *Private Pension Plan Bulletin Historical Tables and Graphs*, at 2 GraphE1g, June 2013, http://www.dol.gov/ebsa/pdf/historicaltables.pdf.

49 *Id*. at 14 GraphE11g.

50 Exchange Act § 4(g), 15 U.S.C. § 78d(g).

51 SEC,*FY 2015 Congressional Budget Justification, FY 2015 Annual Performance Plan, FY 2013 Annual Performance Report*, at 55-56 (Mar. 2014) (hereinafter *Congressional Budget Justification*), http://www.sec.gov/about/reports/secfy15congbudgjust.pdf.

52 Initial estimates indicated that up to 4,000 advisers would make the switch from federal to state registration as a result of the Dodd-Frank Act. North American Securities Administrators Association, ("NASAA"), *The IA Switch: A Successful Collaboration to Enhance Investor Protection* 7 (May 2013), http://www.nasaa.org/wp-content/uploads/2011/08/IA-Switch-Report.pdf. In reality, approximately 2,100 advisers made the switch. *Id.* at 2.

53 *Congressional Budget Justification*, *supra* note 51, at 56. Since the effective date of the Dodd-Frank Act, approximately 1,800 advisers to hedge funds and private equity funds have registered for the first time. Testimony on Oversight of the SEC's Agenda, Operations and FY 2015 Budget Request, Before H. Subcomm. on Fin. Services & Gen. Gov't of the H. Comm. On Appropriations, 113th Cong. (Apr.29, 2014) (statement of Mary Jo White, Chair, SEC), http://www.sec.gov/News/Testimony/Detail/Testimony/1370541674457.

54 *Congressional Budget Justification*, *supra* note 51, at 5. In 2013, a total of 2,877 registered investment advisers, or 27 percent, had assets under management ranging from $1 billion to $100 billion or more. Investment Adviser Association and National Regulatory Services, *2013 Evolution Revolution: A Profile of the Investment Adviser Profession*, at 8-9 (2013).

55 *Id*.

56 SEC,*In Brief: Fiscal 2006 Congressional Budget Request*, at 2 (Feb. 2005), http://www.sec.gov/about/secfy06budgetreq.pdf; *Congressional Budget Justification*, *supra* note 51, at 55.

57 *Congressional Budget Justification*, *supra* note 51, at 56. In Fiscal Year 2013, examiners conducted 964 investment adviser examinations. Testimony on Oversight of the SEC's Agenda, Operations and FY 2015 Budget Request, Before H. Subcomm. on Fin. Services & Gen. Gov't of the H. Comm. On Appropriations, 113th Cong. (Apr.29, 2014) (statement of Mary Jo White, Chair, SEC), http://www.sec.gov/News/Testimony/Detail/Testimony/1370541674457.

58 An alternative solution would be to create a self-regulatory organization for investment advisers and give the SRO responsibility for conducting compliance examinations. However, this alternative is opposed by many in the industry. *See, e.g.*, *infra* notes 61-64.

59 Staff of the SEC, Div. of Inv. Mgmt., *Study on Enhancing Inv. Adviser Examinations*, at 10-11 (Jan. 2011), http://www.sec.gov/news/studies/2011/914studyfinal.pdf.

60 *Congressional Budget Justification*, *supra* note 51, at 55-56.

61 Comment Letter, David G. Tittsworth, IAA, *RE:Study on Enhancing Inv. Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, at 2 (Oct. 19, 2010), https://www.sec.gov/comments/df-title-ix/enhancing-ia-examinations/enhancingiaexaminations-5.pdf.

62 Comment Letter, Kevin R. Keller, CFP Board, *et al.*,*Re: Study on Enhancing Inv. Adviser Examinations Under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*,at 3 (Dec. 16, 2010), http://www.sec.gov/comments/df-title-ix/enhancing-ia-examinations/enhancingiaexaminations-29.pdf.

63 Comment Letter, John D. Rogers & Linda L. Rittenhouse, CFA Institute, *Re: Study on Enhancing Inv. Adviser Examinations*, at 1 (Dec. 3, 2010), http://www.sec.gov/comments/df-title-ix/enhancing-ia-examinations/enhancingiaexaminations-25.pdf.

64 Comment Letter, Joyce A. Rogers, AARP, et al., *Re: H.R. 1627, the Investment Adviser Examination Improvement Act of 2013* (Dec. 4, 2013), http://www.cfp.net/docs/public-policy/2013-12-04-hr-1627-letter-to-mocs.pdf?sfvrsn=2.

65 This conclusion echoes an earlier one by the SEC Section 914 Study. See *supra* note 59 and accompanying text. Other independent observers, including the SEC Office of the Inspector General and the International Monetary Fund, also have taken note of the SEC's inadequate resources for investment adviser exams.

66 Even when an investment adviser provides advice to private funds, including hedge funds or private equity funds, individual investors are affected. The biggest investors in private equity include public and private pension funds, endowments, and foundations, which accounted for 64 percent of all investment in private equity in 2012. Andrew J. Bowden, Director, Office of Compliance Inspections and Examinations, SEC, *Spreading Sunshine in Private Equity*, Address at the Private Fund Compliance Forum (May 6, 2014) (citing the Private Equity Growth Capital Council, "Fact and Fiction," www.pegcc.org/education/fact-and-fiction/) (transcript available at www.sec.gov/News/Speech/Detail/Speech/1370541735361). Private equity advisers are also not immune to misconduct. In more than 50 percent of examinations of private equity fees and expenses, OCIE has found what it considers to be violations of law or material weaknesses in controls. The head of OCIE attributes this to the structure of the industry, the opaqueness of the private equity model, the breadth of limited partnership agreements, and the limited information rights of investors. *Id.* To the extent private equity advisers are engaged in improper conduct, it adversely affects the retirement savings of teachers, firemen, police officers, and other workers across the United States.

67 *Congressional Budget Justification*, *supra* note 51, at 31.

68 *Id.* These statistics refer to all OCIE examinations, including broker-dealers, investment advisers, and investment companies.

69 *Id.*

70 *Id.*

71 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).

72 Presidential Memorandum – Lobbyists on Agency Boards and Commissions, 75 FR 35955 (June 18, 2010).

73 Exchange Act § 39(b), 15 U.S.C. § 78pp(b).

74 Exchange Act § 39(b)(2), 15 U.S.C. § 78pp(b)(2).

75 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).

76 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).

77 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).

78 Mary Jo White, Chair, SEC, Remarks at the Meeting of the Inv. Advisory Comm. (July 25, 2013).

79 Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR 18-2.

80 Transcript of SEC Inv. Advisory Comm. Meeting, at 12 (Apr. 10, 2014).

81 SEC, Recommendation of the Investor Advisory Committee: Crowdfunding Regulations, Apr. 10, 2014, http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-crowdfunding-recommendation.pdf.

82 Crowdfunding, Securities Act Release No. 9470 (Oct. 23, 2013) [78 FR 66427 (Nov. 5, 2013)].

83 SEC, Recommendation of the Investor Advisory Committee: Decimalization and Tick Sizes, Jan. 31, 2014, http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-decimilization-recommendation.pdf.

84 SEC, Recommendation of the Investor Advisory Committee: Legislation to Fund Investment Adviser Examinations, Nov. 22, 2013, http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-examinations-recommendation-2013.pdf.

85 Testifying in support of the budget request, Chair White stated, "There is an immediate and pressing need for significant additional resources to permit the SEC to increase its examination coverage of registered investment advisers so as to better protect investors and our markets." Budget Hearing: Before H. Subcomm. on Fin. Service & Gen. Gov't of the H. Comm. on Appropriations, 113th Cong. (Apr. 1, 2014) (statement of Mary Jo White, Chair, SEC).

86 SEC, Recommendation of the Investor Advisory Committee: Broker-Dealer Fiduciary Duty, Nov. 22, 2013, http://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf.

87 SEC, Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Explore Universal Proxy Ballots, July 25, 2013, http://www.sec.gov/spotlight/investor-advisory-committee-2012/universal-proxy-recommendation-072613.pdf.

88 SEC, Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors, July 25, 2013, http://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf.

89 SEC, Recommendation of the Investor Advisory Committee: Target Date Mutual Funds, Apr. 11, 2013, http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-target-date-fund.pdf.

90 SEC, Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Exchange Act Release No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)].

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94 Pub. L. No. 111-203, sec. 926, 124 Stat. 1376, 1851 (July 21, 2010) (codified at 15 U.S.C. 77d note).

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97 Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Securities Act Release No. 9415 (July 10, 2013) [78 FR 44771 (July 24, 2013)].

98 SEC, Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings, *supra* note 96.

99 Amendments to Regulation D, Form D and Rule 156, Securities Act Release No. 9416 (July 10, 2013) [78 FR 44806 (July 24, 2013)].

100 At the IAC meeting on July 25, 2013, Chair White provided the IAC with a chart mapping each of its recommendations to the corresponding text in the Commission's proposed and final rule releases.

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