

November 21, 2013

Chairman Joseph Dear
Investor Advisory Committee
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Investor as Purchaser Subcommittee Recommendation on Legislation to Fund
Investment Adviser Examinations**

Dear Mr. Chairman:

The Financial Planning Coalition (Coalition)¹ and the Investment Adviser Association (IAA)² urge the Investor Advisory Committee (Advisory Committee) to adopt the Investor as Purchaser Subcommittee's (Subcommittee) recommendation that the U.S. Securities and Exchange Commission (Commission or SEC) request that Congress enact legislation authorizing the Commission to impose "user fees" on SEC-registered investment advisers. These fees would be used to enhance investor protection by increasing the frequency of on-site examinations.

Investors Must Be Better Protected

Millions of Americans rely upon investment advisers to help them with many financial-related issues, including retirement planning, household budgeting, and saving for college. The SEC is charged with overseeing the more than 11,000 registered investment advisers that manage approximately \$48 trillion in assets. The Commission's Office of Compliance, Inspections and Examinations (OCIE) faces significant resource challenges in maintaining a robust examination program, as evidenced by OCIE's examination rate – projected to be 10% for the current year. Moreover, 40% of investment advisers have never been examined. These statistics are unacceptable and must be improved.

Commission Chair Mary Jo White recently expressed her concerns regarding the SEC's inability to properly oversee registered investment advisers in a speech where she noted that the SEC is now "tasked with inspecting nearly 11,000 registered advisers who advise approximately 9,700 mutual funds and ETFs and 30,000 private funds. That is a 24-to-1 ratio of examiners to registrants and a nearly 90-to-1 ratio of examiners to funds – far larger than that of almost every

¹ The Financial Planning Coalition, representing about 75,000 stakeholders, is a collaboration of Certified Financial Planner Board of Standards, Inc. (CFP Board), the Financial Planning Association® (FPA®), and the National Association of Personal Financial Advisors (NAPFA), formed to advise legislators and regulators on how best to protect consumers by ensuring that financial planning services are delivered with fiduciary accountability and transparency. To learn more, please visit www.FinancialPlanningCoalition.com.

² The IAA is a not-for-profit association that represents the interests of investment adviser firms that are registered with the SEC. For more information, please visit our website: www.investmentadviser.org.

other financial regulatory agency.”³ Chair White has also stated that “the current level of resources is not sufficient to permit the SEC to adequately examine regulated entities and enforce compliance with the securities laws in a way that investors expect and deserve.”⁴ Chair White’s position is consistent with an SEC staff recommendation contained in a report mandated in Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding the then current state of investment adviser oversight and how to improve it (Section 914 Study).⁵

A User Fee is the Right Policy Solution

The Section 914 Study discusses two viable options to address this resource gap – requiring advisers to submit to oversight by a self-regulatory organization (SRO) and collecting a user fee. Both options have been the subject of legislation in the House of Representatives. The Coalition and IAA support a user fee as the best option to increase investor protection through more frequent investment adviser examinations. It is an efficient, economical, and common sense solution to the Commission’s vexing problem of insufficient resources.

Quantitative analysis supports the argument that a user fee is the most effective and efficient way to improve investment adviser oversight. The Boston Consulting Group, Inc. conducted a study and survey (BCG Study)⁶ which determined, among other things, that –

- creating an SRO for investment advisers would likely be twice as expensive as funding an enhanced SEC examination program;
- the startup costs alone for a new SRO or one run by FINRA could fund an enhanced SEC examination program for an entire year; and
- any cost savings to the SEC of outsourcing investment adviser examinations would likely be minimal.

In addition to the lower cost to the federal treasury, the BCG Study found that a user fee enjoys broad industry support. The survey found that –

- approximately 81% of investment advisers said they preferred the SEC over FINRA oversight; and

³ See, Mary Jo White Remarks Before the National Society of Compliance Professionals National Membership Meeting, Oct. 22, 2013 at (<http://www.sec.gov/News/Speech/Detail/Speech/1370539960588>).

⁴ See, Mary Jo White Testimony Before the House Subcommittee on Financial Services and General Government, Committee on Appropriations, May 16, 2013 at (<http://www.sec.gov/News/Testimony/Detail/Testimony/1365171516050>) and Testimony Before the Senate Subcommittee on Financial Services and General Government, Committee on Appropriations on June 25, 2013 at (<http://www.sec.gov/News/Testimony/Detail/Testimony/1365171606059>).

⁵ See, Study on Enhancing Investment Adviser Examinations (Jan. 19, 2011), at <http://www.sec.gov/news/studies/2011/914studyfinal.pdf>.

⁶ See, The Boston Consulting Group, Inc., *Investment Adviser Oversight: Economic Analysis Options*, (Dec. 15, 2011), at http://www.cfp.net/docs/public-policy/bcg_investment_adviser_oversight_economic_analysis.pdf?sfvrsn=2.

- the preference for SEC oversight remained strong even if it would cost investment advisers more than FINRA oversight.⁷

H.R. 1627 is a Targeted Solution

As the Subcommittee notes, Rep. Maxine Waters, along with Rep. John Delaney, reintroduced a user fee bill in the 113th Congress – H.R. 1627, the Investment Adviser Examination Improvement Act of 2013 – which the Coalition, IAA, and a broad array of organizations support, including AARP, Consumer Federation of America, Fund Democracy, and the North American Securities Administrators Association.

When she introduced the bill, Ranking Member Waters stated, “[t]his legislation answers a funding gap which has been largely responsible for the infrequency of investment adviser exams, and represents the simplest and most direct method for achieving the desired result: improved quality and quantity of these exams and another step toward restoration of public confidence in the markets.”⁸ Rep. Delaney, an original co-sponsor, said, “[i]nvestment advisers play a huge role in the financial lives of millions of Americans and we should make sure that they’re acting properly. In a time of tight budgets, the Investment Adviser Examination Improvement Act strengthens consumer protection measures in a taxpayer friendly, cost-effective way that requires no appropriated funds. This legislation would allow the SEC to improve oversight and help protect investors.”⁹

H.R. 1627 is narrowly tailored to provide the SEC with much-needed resources. The bill –

- mandates that any fees collected be used for the sole purpose of increasing the frequency of adviser examinations by the SEC;
- requires the SEC to conduct its fee determination through a public notice and comment rulemaking;
- requires the SEC to consider, among other things, factors such as the size of an adviser, the adviser’s assets under management, and the adviser’s risk profile in determining a fee; and
- requires the Comptroller General to conduct a biennial audit of the SEC’s use of fees.

As the Subcommittee points out, the concept underpinning this legislation is neither novel nor unprecedented. The House of Representatives has twice before, in 1992 and in 1993, approved similar legislation. We are urging them to do it again. Increasing examination of investment advisers is consistent with our efforts to ensure that investment advice is provided in a manner that keeps investors’ interests paramount through accountability and transparency.

⁷ See, The Boston Consulting Group, Inc., *Investment Adviser Survey of Investment Adviser Preferences*, (Dec. 15, 2011), accessible at http://www.cfp.net/docs/public-policy/bcg_investment_adviser_oversight_adviser_preferences.pdf?sfvrsn=2.

⁸ See, House Committee on Financial Services Press Release, April 19, 2013 at (<http://democrats.financialservices.house.gov/press/PRArticle.aspx?NewsID=1534>).

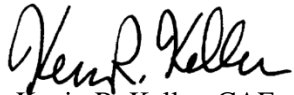
⁹ Id.

Chairman Joseph Dear
November 21, 2013
Page 4

Enhancing the Commission's ability to regularly examine registered investment advisers will lessen the risk that American investors will fall prey to fraud and abuse.

Again, the Coalition and IAA urge the Advisory Committee to adopt the recommendation that the SEC request that Congress enact user fee legislation.

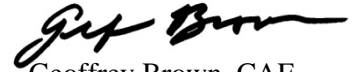
Respectfully submitted,



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