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December 10, 2013

Elizabeth Murphy, Secretary
United States Securities and Exchange Commission
100 F Street
Washington, D.C.20549

Re: Strengthening Investor Protection and the Strict Privity Rule, File No. 265-28

Dear Secretary Murphy:

Section 913 (Study and Rule Making Regarding Obligations of Brokers, Dealers, and Investment Advisors) needs to be clarified and corrected on the point described below.

In pertinent part the statute defines the term "retail investor" as follows:

> . . . [T]he term 'retail customer' means a natural person, or the legal representative of such natural person, who –
>
> (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes.
>
> * * *
>
> (g) Standard of Conduct
>
> (i) General
>
> The Commission may promulgate rules to provide that the Standard of Conduct for all brokers, dealers and investment advisers, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rules provide) shall be to act in the best

> interest of the customer without regard to the financial or other interest of the broker dealer, or investment advisor providing the advice.
>
> * * *
>
> However "... the Commission shall not ascribe a meaning to the term 'customer' that would include an investor in a private fund managed by an investment advisor, where such private fund has entered into an advisory contract with such advisor."(Emphasis Added)

The main theme of Section 913 is to elevate the standards for broker-dealers to standards no less stringent than investment advisors. The above language is sufficiently ambiguous to be incongruous with the purpose of Title IX of Dodd-Frank to strengthen investor protection. Arguably the language quoted resurrects a "strict privity rule" that will preclude the individual and non-institutional investor in a hedge or private equity fund from suing the investment advisor of the fund for professional negligence.

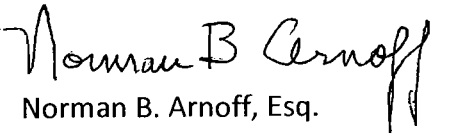
Moreover investors in hedge or private equity funds do not present a context where the investment advisor to the fund will be subject to liability from an indeterminate class for acts or omissions occurring over an indefinite period of time. It is well settled the current law allows for "functional privity" and the context presented fits within those boundaries. The investor in the fund is an intended recipient of the services of the advisor that contracts with the fund and should have standing to sue for professional negligence.

The private advisor exemption has been eliminated and a significant regulatory loophole has been closed. There is no implied right of action under Section 206 of the Investment Advisors Act of 1940 so in consequence Section 913 of Dodd-Frank inconsistently constricts the individual and non-institutional investor in their exercise of available remedies, even further from what those remedies were pre-Dodd-Frank. Since we are dealing with a federal statute it would appear state contract and tort law would be pre-empted.

I understand in the case of private equity and/or hedge funds it is the advisor who would authorize the fund's trades but there can be language in the statute or applicable rule to clarify who has authority to act for the fund. The statute even by misconstruction should not eliminate or minimize the investor's remedies against the investment advisor to the fund.

I respectfully suggest that the Commission and the Staff review the foregoing issue and (if I am correct) take further steps in the best interest of the individual and non-institutional investor to communicate with the Congress so that the language referenced to above would be eliminated from the statute and its basic purpose of enhancing investor protection will not be compromised.

Respectfully,



Norman B. Arnoff, Esq.

cc: Honorable Mary Jo White, Chair
Honorable Daniel Gallagher
Honorable Kara Stein
Honorable Michael Piwowar