MEMORANDUM

TO: File No. 4-606
File on Study on Enhancing Investment Adviser Examinations Pursuant to Section 914 of the Dodd-Frank Act

FROM: Alicia F. Goldin
Office of Commissioner Elisse B. Walter

DATE: December 21, 2010

On November 2, 2010, Commissioner Elisse B. Walter and Alicia F. Goldin, Counsel to the Commissioner, met with the following representatives of the Investment Advisers Association ("IAA"):

David Tittsworth, Executive Director, IAA
Karen Barr, General Counsel, IAA
Jennifer Choi, Associate General Counsel, IAA
Christine Carsman, Chief Regulatory Counsel, Affiliated Managers Group, Inc.
David Oestreicher, Chief Legal Counsel, T. Rowe Price Associates, Inc.

The discussion included, among other things, issues related to the Commission studies Regarding Obligations of Brokers, Dealers, and Investment Advisers and on Enhancing Investment Adviser Examinations, in accordance with the attached agenda that they provided in advance of the meeting. IAA also provided copies of the comment letters it submitted in relation to the two matters referenced above, dated August 30, 2010 and October 19, 2010, respectively, as well as additional materials, which are attached to this memorandum.

Agenda for Meeting of IAA and Commissioner Walter on Studies

Pursuant to Sections 913 and 914 of the Dodd-Frank Act

1. The investment advisory services provided by investment adviser and broker-dealers and other business activities;
2. Legal and regulatory standards of care for investment advisers and broker-dealers in providing investment advice;
3. The impact on investors of imposing the Advisers Act fiduciary duty on brokers providing advice;
4. Substantive differences in regulation of advisers and brokers providing advice about securities;
5. Regulatory, examination, and enforcement resources and effectiveness;
6. Self-regulatory organizations; and
7. Other issues raised by Section 913 and 914 of the Dodd-Frank Act.

INVESTMENT ADVISER
ASSOCIATION

October 19, 2010

Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: SEC Study on Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

The Investment Adviser Association ("IAA")[1] greatly appreciates the opportunity to provide comments to the Commission on Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

Section 914 requires the Commission to "review and analyze the need for enhanced examination and enforcement resources for investment advisers." In doing so, the Commission is directed to consider: (i) the number and frequency of examinations of investment advisers by the Commission over the last five years; (ii) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and (iii) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers. Section 914 further provides that the Commission "shall use such findings to revise its rules and regulations, as necessary" and to issue a report to Congress within 180 days, including "a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study."

A robust and effective examination program for the investment advisory profession is critical to the Commission's mission of protecting investors. We believe that the Commission, as an independent governmental regulator directly accountable to Congress and

[1] The IAA is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of over 500 firms that collectively manage in excess of $9 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

the public, is the appropriate regulator for oversight of the investment advisory profession. 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.[2]

In assessing the need to enhance the investment adviser examination program, we urge the Commission to avoid equating frequency of examinations with quality of oversight. The Commission should strive to achieve an enhanced oversight program by deploying its resources wisely to identify and target misconduct and firms with high-risk characteristics, including designing and implementing "smart" examinations. While the introduction of a self-regulatory organization might result in a greater number of adviser examinations, we are not persuaded that it would result in overall improvements to the effectiveness of the current examination regime or enhanced investor protection. As noted by SEC Commissioner Luis Aguilar, an SRO "is an illusory way of dealing with the problem of resources. The issue is really one of hiring, training, and overseeing an adequate program to examine advisers."[3]

We continue to strongly oppose the creation of an SRO for investment advisers.[4] We do not believe the effectiveness of the SRO model has been demonstrated and are concerned about the lack of transparency and accountability of non-governmental regulators. The SRO model is particularly inappropriate for investment advisers, given the diverse nature of the investment advisory profession and its principles-based regulatory framework. SROs also result in unnecessary and inefficient layers of bureaucracy and cost.

Following are our comments on specific provisions of Section 914.

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[2] We recently submitted extensive comments to the Commission on its release regarding the Section 913 study in the Dodd-Frank Act on the obligations of broker-dealers and investment advisers, including the effectiveness of SEC oversight. *See* Letter from David G. Tittsworth, Exec. Dir., IAA, to Elizabeth Murphy, Secretary, Sec. and Exch. Comm'n, re: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, Rel. No. IA-3058; File No. 4-606 (Aug. 30, 2010) ("IAA Section 913 Letter"), available on our web site under "Comments & Statements." *See also Study Regarding Obligations of Brokers, Dealers, and Investment Advisers*, SEC Rel. No. IA-3058, File No. 4-606 (July 27, 2010).

[3] Luis A. Aguilar, Comm'r, Sec. and Exch. Comm'n, *SEC's Oversight of the Adviser Industry Bolsters Investor Protection* (May 7, 2009) ("Comm'r. Aguilar Speech"). *See also* Letter from Richard H. Baker, President and CEO, Managed Funds Association, to Elizabeth Murphy, Secretary, Sec. and Exch. Comm'n, re: SEC Regulatory Initiatives Under the Dodd-Frank Act (Sept. 22, 2010) ("MFA strongly supports ensuring that the Commission has the resources it needs to fulfill its mission . . . . We are concerned that creating a new SRO for investment advisers would not result in any public policy benefit, but would create an additional layer of regulation, subjecting advisers to potentially duplicative or inconsistent requirements. We are also concerned, given the significant variation in business models among investment advisers, from small firms that advise private funds to the largest global banks that advise retail clients, that a single SRO for investment advisers would be ill-equipped to handle the diversity of issues without being cost prohibitive.")

[4] *See Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office: Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. (Oct. 6, 2009) (statement of David G. Tittsworth, Exec. Dir. of the IAA) ("Tittsworth House Testimony") at 28-32.

I. Number and Frequency of Examinations

Section 914 requires the Commission to consider the number and frequency of SEC examinations of investment advisers over the last five years. The percentage of investment advisers examined ranged from 17.8% in fiscal year 2005 to 11.1% in fiscal year 2009.[5] Currently, approximately 460 examination staff and accountants are responsible for approximately 11,500 advisers (as well as approximately 7,800 investment companies).[6] In recent years, the growth in the number of investment advisers has stretched the Commission's resources.[7] The IAA has long been a strong advocate of bolstering Commission resources. Indeed, we supported self-funding provisions considered by Congress during deliberations of the Dodd-Frank legislation.

Although the final legislation does not include a self-funding provision, the Dodd-Frank Act includes provisions that will significantly increase the Commission's level of resources. For example, it doubles the level of the Commission's authorization during the next five years and allows it to establish a $100 million reserve fund.[8] These and other provisions will significantly enhance the Commission's ability to examine and inspect SEC-

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[5] According to data derived from the Commission's annual reports, which provide percentages of advisers examined and the number of exams, as well as the annual Investment Adviser Association and National Regulatory Services *Evolution/Revolution* reports, which provide numbers of registered advisers from publicly available data, 1,530 out of approximately 8,614 registered advisers (17.8%) were examined in fiscal year 2005; 1,346 out of approximately 10,290 registered advisers (13.1%) were examined in fiscal year 2006; 1,379 out of approximately 10,446 registered advisers (13.2%) were examined in fiscal year 2007; 1,521 out of approximately 11,292 registered advisers (13.5%) were examined in fiscal year 2008; and 1,244 out of approximately 11,257 registered advisers (11.1%) were examined in fiscal year 2009. *See SEC FY2011 Congressional Justification In Brief* (Feb. 2010) ("SEC FY2011 Justification") at 20. We understand that final data from fiscal year 2010 is not yet available.

[6] *See* SEC FY2011 Justification, *supra* note 5, at 4.

[7] *See* Tittsworth House Testimony, *supra* note 4, at 27. *See also Enhancing Investor Protection and the Regulation of Securities Markets – Part II: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs*, 111th Cong. (Mar. 26, 2009) (statement of David G. Tittsworth, Exec. Dir. of the IAA) ("Tittsworth Senate Testimony") at 26-27.

[8] Section 991 of Dodd-Frank Act authorizes $1.3 billion for the Commission's budget in 2011 and increases the authorized funding level each year through 2015 to $2.25 billion. For fiscal year 2011, the Commission has requested 100 new positions for the Office of Compliance Inspections and Examinations ("OCIE"), anticipating that such staffing will enable it to conduct 50 additional examinations of advisers, 25 additional examinations of mutual funds, and 75 additional examinations of newly registered private fund advisers. *See* SEC FY2011 Justification, *supra* note 5, at 4. In addition, the Commission expects the Division of Risk, Strategy, and Financial Innovation to provide support to OCIE in its surveillance and risk-targeting efforts. *Id.* at 50. We assume that the Commission's doubling in its level of authorization over the next five years as a result of the Dodd-Frank Act will result in at least a doubling of the number of investment adviser examinations conducted. We suggest that in connection with its Section 914 study, the Commission publish information about the costs of its investment adviser examination program so that the public may evaluate the Commission's tactical deployment of resources.

registered investment advisers and provide needed resources for long-term planning and infrastructure. Moreover, the Dodd-Frank Act increases the assets under management threshold separating federally-registered and state-registered advisers from $25 million to $100 million. This will shift about 4,000 investment advisers from Commission regulation to state regulators.[9] Even considering the addition of private fund advisers, the ratio of Commission examination staff to adviser registrants will increase.[10]

Frequency of examinations is not a proxy for an effective examination and oversight program. Senator Dodd emphasized this point with respect to Section 913, stating: "in this review, the paramount issue is effectiveness. If regulatory examinations are frequent or lengthy but fail to identify significant misconduct – for example, examinations of Bernard L. Madoff Investment Securities, LLC – they waste resources and create an illusion of effective regulatory oversight that misleads the public."[11] An effective examination program focuses on preventing, detecting, and deterring fraud and other abusive practices rather than on numerical examination targets or technical violations that may not result in investor harm. We understand that it may be difficult to document situations where an effective examination program has, for example, chilled potential misconduct. In conducting this analysis, the Commission could, nonetheless, attempt to gather information about abuses and how the Commission uncovered them – whether by routine or sweep examinations, tips, complaints, referrals, or other means. The Commission could also analyze significant misconduct discovered by other regulators using various methods, as well as other qualitative measures bearing on effectiveness of oversight.

[9] *See, e.g.,* Investment Adviser Association and National Regulatory Services, *Evolution/Revolution 2010: A Profile of the Investment Advisory Profession* (Sept. 2010).

[10] While the number of private fund advisers that meet the registration criteria specified in the Dodd-Frank Act is currently unknown, we believe the number will be much smaller than the number of advisers shifting from SEC to state oversight.

[11] 156 Cong. Rec. S5920 (daily ed. July 15, 2010) (statement of Sen. Christopher Dodd). *See also* Financial Industry Regulatory Authority ("FINRA") Report of the 2009 Special Review Committee on FINRA's Examination Program in Light of the Stanford and Madoff Schemes (Sept. 2009) ("FINRA Report re: Stanford and Madoff Schemes"), at 5, *available at* http://www.finra.org/web/groups/corporate/@corp/documents/corporate/p120078.pdf ("FINRA examiners did come across several facts worthy of inquiry associated with the Madoff scheme that, with the benefit of hindsight, should have been pursued."); *The Madoff Investment Securities Fraud: Regulatory and Oversight Concerns and the Need for Reform: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs,* 111th Cong. (Jan. 27, 2009) (testimony of John C. Coffee, Jr., professor at Colum. Univ. Law School) (noting that Madoff's advisory activity was within the NASD's and FINRA's jurisdiction); *Enhancing Investor Protection and the Regulation of Securities Markets – Part II: Hearing before the S. Comm. on Banking, Hous., and Urban Affairs,* 111th Cong. (Mar. 26, 2009) ("[L]et me say very clearly that I don't lay the blame for the SEC's failure to respond appropriately to [Madoff]...at the feet of a lack of resources....In this instance, I am not sure we can blame resource issues.") (statement of Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n during questioning).

We commend the meaningful steps recently taken by Chairman Schapiro and the Director of OCIE to enhance the effectiveness of the current oversight program of advisers and the examination staff's expertise in the securities markets.[12] OCIE has undergone significant changes and reform in the past two years, including: (1) placing a greater emphasis on fraud detection in addition to identifying potential violations of securities laws; (2) strengthening internal controls to maximize resources; (3) recruiting examiners with specialized skills; and (4) increasing examiner expertise through training.[13] Importantly, OCIE has moved aggressively to implement reforms and has focused its strategy to "identify the areas of highest risk and deploy [its] examiners against these risks, in order to improve compliance, prevent fraud, monitor risk and inform policy-making."[14] In addition to these initiatives, OCIE "plans to significantly expand and enhance its oversight of registered advisers," including improving its risk assessment and surveillance methodologies, and to devote "significant resources to conducting cause examinations arising out of tips and complaints alleging fraud or other abuse, as well as risk targeted and sweep examinations."[15]

The Division of Enforcement also has implemented significant changes. In May 2010, it launched specialized units dedicated to five areas, including asset management for hedge funds and investment advisers. The Division of Enforcement also enhanced staff training with specialized skills and implemented the Commission's newly-formed Office of Market Intelligence in January 2010, which is responsible for collection, analysis, risk-weighting, triage, referral, and monitoring hundreds of thousands of tips, complaints, and referrals received by the Commission. The Office of Market Intelligence's mission is to ensure that the Enforcement Division dedicates investigative resources to those tips, complaints, or referrals presenting the greatest threat of investor harm.[16] OCIE's referrals to Enforcement

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[12] *See Oversight of the U.S. Securities and Exchange Commission: Evaluating Present Reforms and Future Challenges: Hearing Before the H. Sub. on Capital Markets, Insurance, and Government-Sponsored Enterprises*, 111[th] Cong. (July 20, 2010) (statement of Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n) ("OCIE has instituted a new governance structure with an emphasis on consistency in policy, program, and deployment of risk-focused strategies to target limited resources to mission critical objectives."). *See also SEC Oversight: Current State and Agenda, Hearing Before the H. Sub. Comm. on Capital Markets, Insurance, and Government Sponsored Enterprises*, 111th Cong. (July 14, 2009) (statement of Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n) and *Oversight of the SEC Inspector General's Report on the 'Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme' and Improving SEC Performance: Hearing Before the S. Comm. On Banking, Hous., and Urban Affairs,* 111[th] Cong. (Sept. 22, 2010) (testimony of Robert Khuzami, Dir. of Sec. and Exch. Comm'n Div. of Enforcement, and Carlo di Florio, Dir. of Sec. and Exch. Comm'n Office of Compliance Inspections and Examinations) ("SEC Testimony").

[13] *See Examinations by the Securities and Exchange Commission, Office of Compliance Inspections and Examinations*, (Feb. 2010) ("OCIE Examinations"), available at http://www.sec.gov/about/offices/ocie/ocieoverview.pdf.

[14] *See* SEC Testimony, *supra* note 12, at 13.

[15] *See* SEC FY2011 Justification, *supra* note 5 at 46.

[16] *See* SEC Testimony, *supra* note 12, at 7. *See also Investigating and Prosecuting Financial Fraud after the Fraud Enforcement and Recovery Act: Hearing Before the S. Comm. on Judiciary,* 111[th] Cong. (Sept. 22, 2010) (testimony of Robert Khuzami, Dir. of Sec. and Exch. Comm'n Div. of Enforcement) (describing recent reforms

are tracked through this system to ensure proper staff assignments, which is expected to improve the coordination between Enforcement and OCIE.[17] The Division has reiterated its focus on advisers' breach of fiduciary duty, including fraud and misleading disclosure.

We applaud these positive steps to strengthen the Commission's enforcement and examination program.[18] We also commend the Commission's adoption of Form ADV, Part 2 amendments which will provide additional information about advisers' business practices to assist in risk-targeted examinations. In addition, we recommend the Commission more regularly issue its *ComplianceAlerts* to leverage examination findings by identifying areas in which advisers should proactively focus their compliance resources.[19] We would be pleased to work with the Commission to develop additional ways to ensure a more targeted and effective examination and enforcement program for investment advisers. For example, we would welcome a dialogue between Commission staff and investment advisers about potential data that could assist the Commission in developing an enhanced oversight regime.

II. Authorizing a Self-Regulatory Organization for Investment Advisers

Section 914 requires the Commission to consider the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations "to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers." Authorizing an SRO to inspect advisers could, of course, increase the frequency of examinations. However, we urge the Commission to resist the illusory solution of recommending an SRO for investment advisers simply to increase the number of exams to which an advisory firm is subject without considering other factors. We strongly believe the drawbacks to an SRO for advisers – which include inherent conflicts of interest, serious questions about transparency, accountability, oversight, and added costs and bureaucracy – outweigh any purported benefits. We do not believe that an additional layer of regulation and examination by a non-governmental entity will result in a more effective regulatory oversight program for advisers than enhanced Commission oversight. Thus, we continue to oppose the establishment of an SRO for investment advisers.[20]

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and initiatives, including close collaboration with OCIE, risk-based investigations, organizational reforms, inter-agency cooperation, new Office of Market Intelligence and Dodd-Frank Act whistleblower provisions, among others).

[17] *See* SEC Testimony, *supra* note 12, at 7.

[18] We have consistently supported efforts to improve the SEC examination program for advisers. *See, e.g.*, Letter from David G. Tittsworth, Exec. Dir., IAA, to The Hon. Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n, re: SEC Exams of Investment Advisers (July 29, 2009).

[19] *See* SEC, *ComplianceAlert* (Jun. 2007 and Jul. 2008). In these alerts, the Commission examination staff encourages adviser chief compliance officers to review their compliance programs for particular focus areas based on examination results, to address any compliance or supervisory weaknesses, and to implement improvements as appropriate to the firm's compliance and supervisory programs.

[20] *See* IAA Section 913 Letter, *supra* note 2; Tittsworth House Testimony, *supra* note 4, at 28-32; Tittsworth Senate Testimony, *supra* note 7, at 17-26.

We submit that the effectiveness of the SRO model has not been demonstrated either in the U.S. or abroad. Many jurisdictions do not use the SRO model and others have tested and discarded the structure over time.[21] For example, in the late 1990's, the U.K. government transferred regulatory powers from several SROs to the Financial Services Authority due to the complexities and inefficiencies of the U.K. SRO system.[22] In particular, officials stated, "[i]t has long been apparent that the regulatory structure introduced by the Financial Services Act 1986 (FSA) is not delivering the standard of supervision and investor protection that the industry and the public have a right to expect. The current two-tier system splits responsibility between the Securities and Investments Board (SIB) and the Self Regulatory Organisations (SROs), together with the Recognised Professional Bodies. This division is inefficient, confusing for investors and lacks accountability and a clear allocation of responsibilities."[23] In addition, the U.K. Treasury acknowledged that "[a] single regulator will remove the scope for duplication, gaps and inconsistency that affects the current system."[24] A U.K. government report noted the inherent conflicts of interest present in the SRO model stating that, "[t]he proliferation of regulatory bodies has been widely criticised as unnecessarily complicated, and the term 'self-regulating organisations' gave rise to the suspicion that the SROs were guarding the self-interest of their members rather than protecting the public. This suspicion was fuelled by widespread complaints about fraud, malpractice and mis-selling."[25]

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[21] "Whereas [SROs] are rather significant in the United States, they do not play any role in the United Kingdom and are hardly of any importance in Germany. In the EU, priority is given to the statutory approach to regulation." *See* Deutsche Bundesbank, *Securities Market Regulation: International Approaches*, (Jan. 2006), *available at* http://www.bundesbank.de/download/volkswirtschaft/mba/2006/200601mba_en_securities.pdf. Similarly, Australia does not have SROs as classically defined although exchange organizations have limited self-regulatory powers. *See* Prof. Berna Collier, Comm'r, ASIC, *Ensuring Capacity, Integrity and Accountability of the Regulator* (2005), *available at* http://www.oecd.org/dataoecd/63/12/35174567.pdf.

[22] *See Enhancing Investor Protection and the Regulation of Securities Markets: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs,* 111th Cong. 35-36 (Mar. 10, 2009) (statement of Prof. John C. Coffee, Jr., Columbia Univ. Law School) ("Ultimately, the then chairman of the SIB [Securities and Investments Board], the most important of the SROs, acknowledged that self-regulation had failed in the U.K. and seemed unable to restore investor confidence."). The recent U.K. proposal to restructure the Financial Services Authority does not reinstitute the SRO model. *See* HM Treasury, A new approach to financial regulation: judgement, focus and stability, 2010, Cm. 7874, *available at* http://www.hm-treasury.gov.uk/d/consult_financial_regulation_condoc.pdf.

[23] *See* Letter from Gordon Brown, U.K. Chancellor of the Exchequer, to Sir Andrew Large, Chairman of the SIB, re: Reform of Financial Regulation (May 1997), *available at* http://www.hm-treasury.gov.uk/press_49_97.htm.

[24] *See* Press Release, U.K. HM Treasury, Plans to modernize financial regulation, Financial Services and Markets Bill published (Jul. 30, 1998), *available at* http://www.hm-treasury.gov.uk/press_126_98.htm.

[25] *See* Select Committee on Treasury, 3rd Report 1998-99, *available at* http://www.publications.parliament.uk/pa/cm199899/cmselect/cmtreasy/73/7304.htm.

There is no evidence that an SRO for advisers would be cost effective for investors or the SEC. An SRO would impose duplicative regulation as well as significant membership and other fees on investment advisers, which may be passed on to advisory clients. In addition, the SEC would still be required to expend significant resources to exercise diligent oversight of an SRO.[26] These resources would be better spent by the SEC in bolstering its own experienced staff.

The SRO model is particularly inappropriate for investment advisers. The reasons that persuaded Congress to authorize the creation of an SRO for broker-dealers in 1939 – including the high level of interconnectivity between broker-dealers as well as the highly technical issues related to settlement, execution, and reconciliation involving broker-dealer transactions – simply do not exist in the investment advisory profession. Similarly, one rationale behind the establishment of an SRO for brokers was the ability to impose ethical standards beyond those imposed by statute. In contrast, high enforceable ethical standards are already imposed on investment advisers as fiduciaries under federal law.

The activities and regulation of investment advisers vary significantly from broker-dealers. The core activity of the vast majority of SEC-registered investment advisers is providing investment advice on a discretionary basis to individual and institutional clients. The Investment Advisers Act of 1940 is a principles-based framework that contemplates oversight and enforcement by the Commission. Broker-dealer activities, on the other hand, include buying and selling securities, variable annuities, and interests in private placements; margin lending; securities lending; taking custody of client funds or securities; acting as a market maker, dealer, syndicator, underwriter, or distributor for issuers; and engaging in stock exchange floor activities. FINRA as the broker-dealer SRO takes a specific rules-based approach to its members' activities. These detailed sales practice and transactional rules are not appropriate for advisory activities governed by fiduciary principles.

Despite these differences, FINRA – a membership organization designed and developed to oversee broker-dealer activity – has indicated its desire to exercise oversight and regulation of investment advisers.[27] We oppose extending FINRA's jurisdiction to investment advisers due its lack of accountability, lack of transparency, costs,[28] track record,[29] and bias favoring the broker-dealer regulatory model.[30]

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[26] For example, the SRO system has failed in significant respects on past occasions, requiring substantial investigation and enhanced oversight by the Commission. *See, e.g.,* SEC, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding NASD and the NASDAQ Market (Aug. 1996); SEC, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding NASDAQ as Overseen by its Parent NASD, Rel. No. 51163 (Feb. 2005).

[27] *See, e.g., Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office: Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. (Oct. 6, 2009).

[28] *See* FINRA, Report of the Amerivet Demand Committee of the Financial Industry Regulatory Authority, Inc. 86 (Sept. 13, 2010), *available at* http://www.finra.org/web/groups/corporate/@corp/documents/corporate/p122217.pdf (FINRA benchmarks its

The regulator for investment advisers should acknowledge and appreciate the practices, culture, regulatory structure, and broad diversity of the advisory profession.[31] FINRA's explicit advocacy of extending the broker-dealer regulatory framework to advisers makes it a particularly inappropriate choice to regulate investment advisers.[32] Instead, the SEC, with its experience, expertise and understanding of investment advisers, should continue to be the primary regulator of the investment advisory profession. As Commissioner Aguilar has stated, the Commission is "the only entity with experience overseeing investment advisers, an industry governed by the Advisers Act, which is based on a principles-based regime. By contrast, broker-dealer SROs primarily regulate through the use of very detailed, specific sets of rules and are not well versed in the oversight of principles-based regulation."[33]

Finally, we urge the Commission to ensure that its Section 914 study is not considered in a vacuum. The study should take into account other provisions of the Dodd-Frank Act relating to the Commission's oversight functions. For example, the Commission should be mindful of information that will be generated in response to Section 967, which requires the SEC to appoint an independent consultant to study whether "the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets" and "whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets."[34]

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senior management compensation based on levels in the financial services industry and states that "non-profit organizations and governmental agencies were inadequate comparables for compensation purposes").

[29] *See, e.g.,* Letter from Project on Government Oversight (POGO) to Congress calling for increased oversight of financial self-regulators (Feb. 23, 2010), *available at* http://www.pogo.org/pogo-files/letters/financial-oversight/er-fra-20100223-2.html. *See* FINRA Report re: Stanford and Madoff Schemes, *supra* note 11.

[30] While we oppose the SRO model in general for advisers, should Congress pursue such a model, we also strongly object to the notion that an existing SRO (*e.g.*, FINRA) should be the presumptive designee.

[31] There are a wide range of adviser business models, including traditional asset management firms, financial planners, wealth managers, advisers that are part of global financial institutions, small advisers with a limited number of high net worth clients, asset allocators, private fund managers, mutual fund managers, pension consultants, and others.

[32] *See* Letter from FINRA to SEC re: File Number 4-606 Study Regarding Obligations of Brokers, Dealers and Investment Advisers (Aug. 25, 2010). *See also,* Letters from FINRA to Sec. and Exch. Comm'n, re: *Certain Broker-Dealers Deemed Not to Be Investment Advisers*, Rel. No. 34-50980; File No. S7-25-99 (Feb. 11, 2005 and Apr. 4, 2005).

[33] Comm'r. Aguilar Speech, *supra* note 3.

[34] Other provisions of Dodd-Frank may implicate the structure of any effective and coordinated examination program for investment advisers. These include Section 416, which requires the General Accounting Office to conduct a study "of the feasibility of forming a self-regulatory organization to oversee private funds" and Section 919C, which requires the General Accounting Office to submit a report on "current State and Federal oversight structure and regulations for financial planners."

III. Dually-Registered and Affiliated Entities

Section 914 requires the Commission to consider current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

If an adviser is dually registered with another regulatory agency or has an affiliate that may be regulated by another federal, state, or international regulator, the Commission should cooperate and work closely with those regulators to examine and oversee the activities of the adviser and its affiliates (*i.e.*, FINRA for dually registered advisers and broker-dealers, the Federal Reserve or other banking regulator for banking entities, the CFTC for CFTC-registered advisers, state regulators, and international regulators for global financial services companies.) In fact, Chairman Schapiro recently noted that Commission staff is "meeting regularly, both formally and informally, with other financial regulators. Staff working groups consult and coordinate with the staffs of the CFTC, Federal Reserve Board and other prudential financial regulators, as well as the Department of the Treasury, the Department of State, the Commerce Department, and the Comptroller General."[35]

Moreover, we believe OCIE's implementation of joint broker-dealer and investment adviser exams and a cross training process will result in more effective examinations of such entities.[36] OCIE staff has stated that their exams of dual registrants are coordinated and focused on understanding the interworking of the various businesses and related compliance issues, as well as research in SRO records. Furthermore, OCIE examinations that identify recurring problems or gaps in regulatory coverage are brought to the attention of other Commission divisions or offices, such as the Divisions of Trading and Markets and Investment Management.[37] We believe these significant reforms instituted at the senior levels of the Commission should be given the requisite time to produce an even more effective oversight and inspection program of these entities focused on detecting and preventing violations of the securities laws.

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We appreciate the opportunity to present our views to the Commission on this important study. Please contact me, Karen L. Barr, General Counsel, or Monique Botkin, Assistant General Counsel, with any questions regarding these matters.

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[35] *See Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act by the U.S. Securities and Exchange Commission: Hearing Before the S. Comm. on Banking, Hous., and Urban Affairs*, 111th Cong. (Sept. 30, 2010) (testimony of Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n).

[36] *See* OCIE Examinations, *supra* note 13.

[37] *Id.*

Respectfully submitted,

David G. Tittsworth
Executive Director

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Robert W. Cook, Director
Division of Trading and Markets

Andrew J. Donohue, Director
Division of Investment Management

Henry Hu, Director
Division of Risk, Strategy, and Financial Innovation

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Office of Compliance Inspections and Examinations

INVESTMENT ADVISER
ASSOCIATION

August 30, 2010

Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, Rel. No. IA-3058; File No. 4-606

Dear Ms. Murphy:

The Investment Adviser Association (IAA)[1] greatly appreciates the opportunity to respond to the request for comment by the Commission on the study regarding the obligations of broker-dealers and investment advisers (Study Release).[2] We commend the Commission for moving quickly to address these important issues, particularly considering the relatively short timeframe for the study and the significant amount of other work required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Section 913 of the Dodd-Frank Act requires the SEC to evaluate the effectiveness of existing legal or regulatory standards of care for broker-dealers, investment advisers, and their associated persons in providing personalized investment advice about securities to retail customers and whether there are gaps, shortcomings, or overlaps in those standards. The Dodd-Frank Act further authorizes the SEC to conduct a rulemaking to address the legal or regulatory standards of care for broker-dealers and investment advisers (and their associated persons), taking into account the findings of the study.

The IAA has long believed that financial professionals who perform the same activities should be regulated in the same manner. Accordingly, we have advocated for many years that all persons providing investment advice about securities to clients (regardless of the level of the client's sophistication) should be subject to the same high standard of care – the

[1] 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 web site: www.investmentadviser.org.

[2] Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, Rel. No. IA-3058 (File No. 4-606) July 27, 2010.

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well-established fiduciary duty standard under the Investment Advisers Act of 1940.[3] This federal fiduciary standard, which we discuss at length below, requires investment advisers to act in the best interests of clients and to place the interests of clients before their own. In conducting this study and any subsequent rulemaking, we strongly urge the Commission to avoid efforts to weaken or water down the Advisers Act fiduciary standard.

Under current law, broker-dealers are excluded from the Advisers Act and its fiduciary duty if they provide investment advice "solely incidental" to the conduct of their business as a broker-dealer and receive no "special compensation" for such services.[4] For many years, this exclusion provided a bright line separating traditional brokerage services from traditional investment advisory services. During the last two decades, however, broker-dealers have increasingly moved toward more traditional investment advisory activities (for example, by receiving fee-based compensation instead of commissions), resulting in a blurring of the line under the Advisers Act. Since at least 1999, the SEC has engaged in rulemakings and other activities regarding the standard of care for broker-dealers giving investment advice.[5] Despite these efforts, the issues remain unresolved.

Investors are understandably confused by the different standards that apply to broker-dealers and investment advisers.[6] The provisions of Section 913 reflect congressional concern about this confusion, as well as competing arguments that have made resolution of

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[3] *See, e.g., Hearing on Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office Before the H. Comm. on Fin. Servs.* 111th Cong. (Oct. 6, 2009) (statement of David G. Tittsworth, Executive Dir. and Executive Vice President, IAA) (Tittsworth House Testimony); *Enhancing Investor Protection and the Regulation of Securities Market Hearing Before the S. Comm. on Banking, Hous. and Urban Affairs 111th Cong.* (Mar. 26, 2009) (statement of David G. Tittsworth, Executive Dir. and Executive Vice President, IAA) (Tittsworth Senate Testimony); Letter from David G. Tittsworth, Executive Dir., IAA, to Jonathan Katz, Secretary, SEC, re: Release No. IA-2278 Certain Broker-Dealers Deemed Not to be Investment Advisers (Sept. 24, 2004); Letter from David G. Tittsworth, Executive Dir., ICAA, to Jonathan G. Katz, Secretary, SEC (Jan. 12, 2000).

[4] Section 202(a)(11)(C) of the Advisers Act.

[5] The SEC sought to address these concerns with a rulemaking adopting changes to the exclusion, but the rule was subsequently vacated after a legal challenge. The SEC adopted Advisers Act rule 202(a)(11)-1 to exclude certain broker-dealers offering fee-based brokerage accounts from the Advisers Act. *See* Certain Broker-Dealers Deemed Not to be Investment Advisers, Investment Advisers Act Rel. No. IA-2376 (Apr. 12, 2005). The Financial Planning Association (FPA), however, opposed it and filed suit against the SEC to vacate the rule. The SEC had originally proposed a similar rule in 1999, which also was opposed by the FPA because, among other things, the proposing release embedded a no-action position to create an immediate exception to the definition of broker-dealer. The FPA filed suit against the SEC, and, in response, the SEC withdrew the original proposed rule and reproposed the rule, which was adopted in 2005. In 2007, the D.C. Circuit vacated the SEC's rule on the grounds that the agency lacked the authority to except broker-dealers offering fee-based brokerage accounts from the definition of investment adviser. Financial Planning Association v. SEC, 482 F.3d 481 (D.C. Cir. 2007). Then in 2008, the SEC contracted with the Rand Corporation to study how the different regulatory systems that apply to broker-dealers and investment advisers affect investors.

[6] *See e.g.,* Angela A. Hung, Noreen Clancy, Jeff Dominitz, Eric Talley, Claude Berrebi, Farrukh Suvankulov, *RAND Report: Investor and Industry Perspectives on Investment Advisers and Broker-Dealers,* 14 (Jan. 3, 2008) (RAND Report); TD AMERITRADE Investor Perception Study 2006 ("If investors knew that stockbrokers provided fewer investor protections than investment advisors, 63% **would not seek** financial advice from them.").

these issues elusive. The Commission's study presents an opportunity to reconsider relevant facts and arguments that pertain to these important issues.

We are well aware of the strong rhetoric that has permeated the debate about fiduciary duty. At times, it appears that some are arguing that imposition of the fiduciary standard will solve all investor concerns. On the other hand, there have been claims that fiduciary duty will literally destroy legitimate business models. We respectfully suggest that appropriate policies designed to address the realities of these issues lie somewhere in the middle of such extreme views.

Extending the fiduciary standard to brokers who provide personalized investment advice to retail clients (which we strongly support) will not, in and of itself, prevent fraudulent behavior. Fiduciary duty, based on common law principles arising from a relationship of trust, is an overarching standard that has many beneficial consequences for investors. When properly implemented, the Advisers Act fiduciary standard can and should breed a culture of putting the client's interests first at all times. We also recognize, however, that appropriate regulation and a robust inspection program are critical elements of successful oversight activities. Our organization thus has advocated strongly in favor of bolstering SEC resources to ensure that investment advisers are subject to an effective inspection program. Numerous provisions of the Dodd-Frank Act will result in a dramatic increase of SEC resources. At the same time, we believe that more frequent inspections do not equate to better oversight and thus we continue to support efforts to improve the efficiency and effectiveness of SEC examinations.

On the other hand, arguments that extending the Advisers Act fiduciary duty will result in massive business disruptions and will reduce investor options and choice are clearly misleading and overstated. The Advisers Act fiduciary duty has accommodated a broad spectrum of advisory-related activities for many decades. An integral aspect of the standard is the duty to provide clear and appropriate disclosure to clients of the advisory relationship, potential conflicts of interest, and relevant costs. One of the strengths of the fiduciary standard is its flexibility to apply to a range of activities and services. Extension of this flexible standard will not result in less investor choice or wholly infeasible requirements on those who choose to provide advice to individual clients. In conducting the study and in its subsequent report, we trust that the Commission will give the interests of investors paramount importance as it seeks to find the appropriate policy ground based on the extensive factual record available.

In conducting the study and considering any subsequent rulemaking, we urge the Commission to focus on the standard of care for investment advice. The regulatory requirements for broker-dealers and investment advisers have evolved over the period of several decades based on largely different activities. Despite major changes in both the brokerage and advisory industries during the past 70 years, there continue to be significant differences between the core activities of most broker-dealers (*i.e.*, those who effect securities transactions and are generically referred to as the "sell side") and of investment advisers (*i.e.*, those who are engaged in the business of providing investment advice and are referred to as the "buy side"). Accordingly, we believe it would be inappropriate and counterproductive to import the sales-based broker-dealer regime for investment advisers or to impose Advisers Act protections on non-advisory activities of broker-dealers. Although Section 913 of the Dodd-Frank Act sets forth a number of broad areas to be studied, the legislative history of the provision clearly indicates that the key issue the Commission should focus on is whether the Advisers Act fiduciary duty should be extended to brokers who provide investment advice to individuals. Accordingly, we have focused our comments on this aspect of the study.

We appreciate that the SEC is on a short deadline to submit a report to Congress. In turn, the SEC has provided a brief period for public comment. This letter responds to the SEC's request for comment with respect to items raised in the Study Release. Due to the short comment period, we expect to supplement this letter with additional information before the SEC submits its report to Congress.

We look forward to working with the Commission in the coming weeks and months and stand ready to provide any additional information that may assist the Commission in conducting the study and preparing its report.

I. The Standard of Care Applicable to Investment Advisers Is Most Effective in Protecting Retail Clients

In Item (1) of the Study Release, the SEC requests comment on the effectiveness of existing legal or regulatory standards of care for broker-dealers and investment advisers for providing personalized investment advice and recommendations about securities to retail clients.

The existing standard of care for investment advisers is the fiduciary duty.[7] In a seminal decision in 1963, the U.S. Supreme Court held that the Advisers Act imposes a fiduciary duty on investment advisers.[8] The Court found embodied in the Advisers Act an adviser's affirmative duty of utmost good faith and full and fair disclosure of all material facts to its clients as well as an affirmative obligation to employ reasonable care to avoid misleading its clients.[9] Under this federal fiduciary standard,[10] investment advisers must,

[7] Under the Advisers Act, a person who for compensation is in the business of providing advice about securities is an investment adviser. Once a person is considered an investment adviser and not excluded from the definition, that person is subject to the Advisers Act's fiduciary duty.

[8] SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963).

[9] *Id.* These duties of a fiduciary were applied by the SEC and the courts long before the Supreme Court in the Capital Gains case found them to be embodied in the anti-fraud provisions of the Advisers Act. *See, e.g.,* In the Matter of Arleen W. Hughes, Exchange Act Rel. No. 4048 (Feb. 18, 1948).

[10] *See* Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11 (1979) ("Section 206 establishes 'federal fiduciary standards' to govern the conduct of investment advisers"); Laird v. Integrated Resources, Inc. (5th Cir. 1990) (in a 10b-5 action against an investment adviser, the court looked to the federal fiduciary standard and stated that its "holding encompasses a developed federal standard"). *See also* Political Contributions by Certain Investment Advisers, Investment Advisers Act Rel. No. IA-2910 (Aug. 3, 2009) ("The Supreme Court has construed section 206 as establishing a federal fiduciary standard governing the conduct of advisers").

among other things, act in the best interests of their clients and place the interests of their clients before their own.[11] This well-established standard has been consistently interpreted and applied by the SEC and the courts to require investment advisers to serve their clients with the highest duty of loyalty and care.[12]

Among the specific obligations that flow from an adviser's fiduciary duty are: (1) the duty to have an adequate, reasonable basis for its investment advice; (2) the duty to seek best execution for clients' securities transactions where the adviser directs such transactions; (3) the duty to render advice that is suitable to clients' needs, objectives, and financial circumstances; (4) the duty not to subrogate clients' interests to its own; (5) the duty not to use client assets for itself; (6) the duty to maintain client confidentiality; and (7) the duty to make full and fair disclosure to clients of all material facts, particularly regarding potential conflicts of interest.[13]

The fiduciary standard is based on common law principles arising from the relationship of trust between the adviser and the client. The parameters of an adviser's fiduciary duty depend on the scope of the advisory relationship.[14] Thus, a fiduciary obligation with respect to a particular service is triggered in circumstances in which there is an explicit or implied promise or expectation to provide such advice or service.

In practical terms, fiduciary duty means that, in the course of providing advice to clients, securities professionals must disclose all material information to their clients, including the fees that they charge, how they plan to recommend securities to clients, and any material disciplinary information involving the firms or their investment personnel. Moreover, as fiduciaries, securities professionals must treat their clients fairly and not favor one client over another, especially if they would somehow benefit from favoring one particular client or type of clients. Most important, whenever the interests of securities professionals who are fiduciaries differ from those of their clients, they must explain the

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[11] *See, e.g.*, Lemke & Lins, Regulation of Investment Advisers, 188 (2010) ("an investment adviser must at all times act in its clients' best interests, and its conduct will be measured against a higher standard of conduct than that used for mere commercial transactions").

[12] *See, e.g.*, Proxy Voting by Investment Advisers, Investment Advisers Act Rel. No. IA-2059 (Sept. 20, 2002) ("An adviser's fiduciary duty includes the duty of care and the duty of loyalty to clients").

[13] *See* Amendments to Form ADV, Investment Advisers Act Rel. No. IA-2106 (July 28, 2010); Suitability of Investment Advice Provided by Investment Advisers; Custodial Account Statements for Certain Advisory Clients, Investment Advisers Act Rel. No. IA-1406, note 3 (Mar. 16, 1994) (Suitability Release) (noting duty of full disclosure of conflicts of interest, duty of loyalty, duty of best execution, and duty of care and citing various sources); Applicability of Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Rel. No. IA-1092, (Oct. 16, 1987) (1092 Release) (discussing fiduciary duties).

[14] *See* Michael Koffler, Six Degrees of Separation: Principles to Guide the Regulation of Broker-Dealers and Investment Advisers, 41 Sec. Reg. & Law Rep. 776 (Apr. 27, 2009) ("The scope of a fiduciary's duty under the law necessarily and purposely varies depending on the scope of authority, the ability of entrustors to control the fiduciary, the ability of entrustors to monitor their fiduciary, the extent of power and entrustment provided to the fiduciary, the nature and extent of the services provided by the fiduciary and various other factors.").

conflict to the clients and act to mitigate or eliminate it, ensuring they act in the interests of the clients and not for their own benefit.

A good example of how the fiduciary duty works in practice arises in the area of compensation. If investment advisers receive payment from others for recommending certain types of products, the advisers must tell their clients about the compensation and how the compensation may potentially affect or influence the investment advice that is given. In addition to disclosing this information to clients, investment advisers must act to recommend securities that are in the best interests of the clients regardless of the additional compensation they may receive. Investment advisers must make disclosures regarding conflicts created by their compensation arrangements. For example, advisers paid by commission are required to disclose that commission-based compensation may motivate them to trade more frequently or to recommend trades because they would receive more compensation.

Because of the overarching nature of the fiduciary duty, the obligations of investment advisers cannot be easily circumscribed by a proscribed set of rules.[15] The breadth and flexibility of the fiduciary duty have allowed the regulation of investment advisers to remain dynamic and relevant in changing business and market conditions.[16]

Some broker-dealers are already subject to the fiduciary standard of care with respect to certain of their activities. In particular, broker-dealers that provide discretionary asset management for a fee are subject to the Advisers Act and its accompanying fiduciary duty with respect to those accounts.[17] In addition, the SEC staff has taken the position that brokers

[15] *See id.* ("Given the equitable nature of fiduciary law, it is not tenable to set forth a fiduciary's responsibilities in a detailed manner or to specify a convention to govern their activity. Nor would it be in the public interest to do so. And it certainly would not be consistent with the way fiduciary law has evolved and been interpreted for hundreds of years.").

[16] Over the years, the SEC has favored a flexible approach to fiduciary duty. Investment Adviser Codes of Ethics, Investment Advisers Act Rel. No. IA-2256 (July 9, 2004) ("proposal left advisers with substantial flexibility to design individualized codes that would best fit the structure, size and nature of their advisory businesses"); Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Rel. No. IA-2204 (Dec. 17, 2003) ("Commenters agreed with our assessment that funds and advisers are too varied in their operations for the rules to impose of a single set of universally applicable required elements"); Proxy Voting by Investment Advisers, Investment Advisers Act Rel. No. IA-2106 (Jan. 31, 2003) ("Investment advisers registered with us are so varied that a 'one-size-fits-all' approach is unworkable").

[17] These firms generally are dually registered as both broker-dealers and investment advisers. *See infra* note 25. Broker-dealers also may be subject to state law fiduciary duty under very limited circumstances. In some states, courts have found a broker-dealer to owe a fiduciary duty to a customer in limited circumstances in which the broker-dealer has discretion over an account or because of a special relationship of trust and confidence has *de facto* discretion. *See e.g.*, Hecht v. Harris, 430 F.2d 1202 (9th Cir. 1970) (holding that despite a non-discretionary account, a broker-dealer owed fiduciary duties to a 77-old customer who was unable to understand confirmation slips); Kravitz v. Pressman, Frohlich & Frost, 447 F.Supp. 203 (D.Mass.1978) (holding that a broker-dealer owed fiduciary duties in a non-discretionary account where the customer was clearly unable to understand confirmation slips and completely relied on decision of the broker, who the customer was dating at the time). Unlike investment advisers under the Adviser Act, however, broker-dealers are not considered fiduciaries by operation of law.

providing discretionary management based on commissions and brokers that charge a separate fee for advice also are subject to the Advisers Act and its fiduciary duty.[18]

On the other hand, a broker-dealer whose performance of advisory services is "solely incidental" to the conduct of its business as a broker-dealer and who receives no "special compensation" for such services is excluded from the Advisers Act and its overarching fiduciary duty. Thus, the services with respect to which there is a difference in the standard of care are primarily non-discretionary services, such as making recommendations about securities to brokerage customers. The existing standard of care for such activities is the suitability standard. Under FINRA Rule 2310, broker-dealers that provide such advice to retail customers are required to ensure that the advice is "suitable" to the client.[19] In addition, FINRA Rule 2010 requires broker-dealers when dealing with customers to "observe high standards of commercial honor and just and equitable principles of trade."[20] These standards are essentially standards of fair treatment reflecting a commercial relationship rather than a relationship of trust and confidence.

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[18] After the Court vacated Advisers Act rule 202(a)(11)-1, the SEC proposed to reinstate three interpretive provisions of the rule. Interpretive Rule under the Advisers Act Affecting Broker-Dealers, Investment Advisers Act Rel. No. IA-2652 (Sept. 24, 2007) (Proposed Interpretive Rule Release). The three provisions sought to codify the Commission's views that: (1) a broker-dealer that exercises investment discretion with respect to an account, or that charges a separate fee or separately contracts for advisory services, provides investment advice that is not "solely incidental to" its business as a broker-dealer; (2) a broker-dealer does not receive special compensation within the meaning of section 202(a)(11)(C) solely because it charges a commission for discount brokerage services that is less than it charges for full-service brokerage; and (3) a registered broker-dealer is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject it to the Advisers Act. Although the proposed interpretations were never formally adopted, they are the most recently expressed views of the Commission on this subject and it is our understanding that they continue to represent the interpretations of the Commission.

[19] FINRA Rule 2310 provides:
(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.
(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

(1) the customer's financial status;
(2) the customer's tax status;
(3) the customer's investment objectives; and
(4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[20] FINRA Rule 2010 prohibits broker-dealers from: (1) filing misleading information about membership or registration; (2) trading ahead of a customer limit order; (3) failing to abide by FINRA's front-running policy; (4) engaging in certain purchases or sales in initial public offerings; and (5) failing to register its employees. *See* FINRA 1122 Filing of Misleading Information as to Membership or Registration; IM-1000-3 Failure to Register Personnel; IM-2110-2 Trading Ahead of Customer Limit Order; IM-2110-3 Front Running Policy; 5130 Restrictions on the Purchase and Sale of Initial Equity Public Offerings.

The suitability standard falls short of the breadth of the fiduciary duty.[21] Indeed, the duty to provide suitable investment advice is merely one aspect of the fiduciary duty.[22] For example, brokers under a suitability duty may make recommendations or make investment decisions as long as they are "suitable" for that client under his or her particular circumstances even if they are not in the best interests of the client. Moreover, even if the brokers are motivated to provide particular advice because significant benefits accrue to them (such as receipt of a financial benefit for recommending a particular security), suitability does not require disclosure of such conflicts.

The difference between these standards has been uniformly recognized. During congressional hearings before the enactment of the Dodd-Frank Act, regulators, industry representatives, and academics all testified that the fiduciary standard is higher (and more protective of investors) than the suitability standard.[23] Many commenters also have recognized the strength of the fiduciary principles and written in support of extending fiduciary duty to all financial professionals giving investment advice.[24]

II. The Gap in the Standard of Care of Retail Investors Should be Eliminated

Item (2) of the Study Release requests information on whether there are legal or regulatory gaps or overlaps in standards in the protection of retail customers relating to the standard of care that should be addressed by rule or statute.

We respectfully submit that the disparity between the standard of care for investment advisers and broker-dealers providing advice should be eliminated. First, as discussed above,

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[21] FINRA has issued several interpretive notices that clarify what suitability means. *See, e.g*, FINRA IM 2310-2 Fair Dealing with Customers; IM 2310-3 Suitability Obligations to Institutional Clients; 05-59 NASD Guidance Concerning the Sale of Structured Products. In FINRA Notice to Members 2310-2, Fair Dealing with Customers, FINRA states that even though a broker-dealer is not precluded from pursuing its sales efforts, such efforts must represent fair treatment for the persons to whom the sales efforts are directed.

[22] *See* Suitability Release *supra* note 13 ("Investment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable advice").

[23] *See* Tittsworth House Testimony, *supra* note 3. During an October 2009 hearing before the House Committee on Financial Services, Rep. Spencer Bachus asked each of the witnesses on the panel on Strengthening Investor Protection whether fiduciary duty or suitability was the higher standard. Each witness responded that fiduciary duty was the higher standard: Denise Voigt Crawford, Texas Securities Commissioner, Securities Administrators Board, on behalf of North American Securities Administrators Association; Richard Ketchum, Chairman and CEO, Financial Industry Regulatory Authority; Mercer E. Bullard, Founder and President, Fund Democracy, Inc.; John Taft, Head of Wealth Management, RBC Wealth Management, on behalf of Securities Industry and Financial Markets Association; David G. Tittsworth, Executive Director, IAA; Bruce W. Maisel, Vice President and Managing Counsel, General Counsel's Office, Thrivent Financial for Lutherans, on behalf of the American Council of Life Insurers.

[24] *See, e.g.*, Jane Bryant Quinn, *Will Brokers Have to Put Your Interest First?*, janebryantquinn.com, May 6, 2010; Tara Siegel Bernard, *Trusted Adviser or Stock Pusher? Finance Bill May Not Settle It*, N.Y. Times, Mar. 3, 2010; Paul Sullivan, *Broker? Adviser? And What's the Difference*, N.Y. Times, Feb. 18, 2010; Tara Siegel Bernard, *Struggling Over a Rule for Brokers*, N.Y. Times, Feb. 16, 2010; Jason Zweig, *The Fight Over Who Will Guard Your Nest Egg*, WALL ST. J., Mar. 28, 2009.

the fiduciary standard is higher and more protective than the standard applicable to broker-dealers providing personalized investment advice. Second, retail customers mistakenly believe their broker-dealers are already required to act in their best interests. Third, retail clients will greatly benefit from this higher standard of care. We discuss the latter two reasons in more detail below.

As raised by the SEC in Item (10) of the Study Release, this disparity could have been addressed by removing the broker-dealer exclusion in section 202(a)(11)(C) of the Advisers Act, thereby eliminating completely any regulatory gaps that may exist between broker-dealers providing investment advice and investment advisers.[25] Although we would have supported such a legislative change, we appreciate that Congress elected to adopt an alternative approach. Given the legislative mandate in the Dodd-Frank Act, the SEC can achieve a similar result by imposing by rule the fiduciary duty on broker-dealers that provide personalized investment advice that requires them to act in the best interests of their clients.

The Dodd-Frank Act authorizes the SEC to impose on brokers providing advice to retail customers (or such other customers as the SEC may by rule provide) the same standard of conduct applicable to advisers under section 211 of the Advisers Act. The Act correspondingly authorizes the SEC to promulgate rules that the standard of conduct under section 211 shall be no less stringent than the standard of care under Advisers Act sections 206(1) and (2). Although not specifically raised in the Study Release, which is focused on retail clients, we urge the SEC not to require different standards of care under the Advisers Act for different types of clients, including institutional clients. The Dodd-Frank Act does not compel this result, which could result in a diminution of the current strong protections for advisory clients. Thus, we respectfully submit that the Commission should codify the principles-based fiduciary standard applicable to all clients under the Advisers Act rather than adopt a detailed set of rules delineating duties for brokers and advisers with respect to individual clients.

III. <u>Retail Customers Do Not Understand the Different Standards of Care Applicable to Broker-Dealers and Investment Advisers and Are Confused by the Different Standards Because Broker-Dealers Have Portrayed Themselves as Trusted Advisers</u>

In Items (3) and (4) of the Study Release, the SEC requests comment on whether retail customers do not understand that there are different standards of care applicable to broker-dealers and investment advisers in the provision of personalized investment advice about securities to retail customers and whether the existence of different standards of care is a source of confusion. The answers to these questions are unequivocally in the affirmative.

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[25] The vast majority of broker-dealers that report providing investment advisory services are already dually registered as investment advisers with the SEC or the states. *See* RAND Report, *supra* note 6 at 54-60, 122-123 (finding approximately 550 brokers dually registered with the SEC and 360 dually registered with the states). Eliminating the broker-dealer exclusion would simply require these broker-dealers to adhere to a fiduciary duty to all accounts for which they provide personalized investment advice. Moreover, there may be as many as approximately 230 additional broker-dealers that would be required to register under the Advisers Act or with the states if the broker-dealer exclusion was eliminated. *See id.* There would be some additional costs associated with SEC and state registrations. Moreover, it would be likely that there would be more firms to examine as registered investment advisers by the SEC and the states.

During recent years, broker-dealers increasingly have migrated toward the investment advisory model and held themselves out as trusted advisers. A result of this significant development has been investor confusion. The SEC has clear evidence of both phenomena. For example, in 2008 the SEC commissioned a study by the Rand Corporation that found that "broker-dealers have begun to drift subtly into a domain of activities that (at least under the regulatory regime) have historically been the province of investment advisers."[26] Moreover, based on interviews conducted with investors, the report found investor confusion resulting from the manner in which broker-dealers marketed themselves:

> *much of the recent marketing by broker-dealers focuses on the ongoing relationship between the broker and the investor and as brokers have adopted such titles as "financial advisor" and "financial manager."*[27]

Broker-dealers have been aggressively marketing themselves as "advisors" and "financial consultants" who customers can rely upon and trust. The resulting customer confusion has created a mismatch between client expectations and reality: customers now expect that brokers are acting in their best interests when in fact there is no obligation to do so.[28] The SEC should act to ensure that investors who place their trust in broker-dealers are protected by the higher standard of care required of fiduciaries.

IV. Retail Clients Will Benefit From the Uniform Application of the Advisers Act Fiduciary Standard

In Item (12) of the Study Release, the SEC requests comment on the potential impact upon retail customers from changes in standards of care. Currently, retail clients are protected differently depending on whether they engage a broker-dealer or an investment adviser to provide them with investment advice. Retail clients will benefit in important and specific ways from the application of a uniformly high fiduciary standard to all securities professionals who provide investment advice.

Following are concrete illustrations of how fiduciary duty would benefit customers of broker-dealers:

- Brokers recommending and selling investment products to customers would have to disclose all fees, compensation, and other incentives they earn from the advice;

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[26] *See* Rand Report, *supra* note 6.

[27] *Id.* at 19; *see also, Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals, Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. 16-17 (July 17, 2009) (statement of Paul Schott Stevens, President and CEO, Investment Company Institute) (noting that "over the last decade, brokers have significantly shifted their business model to include providing investment advice and charging fees based on assets under management, rather than commissions for each transaction. This model previously had been used solely by investment advisers").

[28] RAND Report, *supra* note 6 at 31-32.

- Brokers would have to recommend products that are in the best interests of their customers, and would not be able to steer customers to certain products that, while technically not inappropriate for the customer (and, therefore "suitable"), are not in the customer's best interests;

- Brokers would have to disclose not only information about investment products they recommend, but also information about themselves, including conflicts of interest, including an explanation of

    - the potential incentive to favor certain products over others as long as the investment is at least suitable for that client or an explanation that their commission-based fee could potentially be an incentive for brokers to engage in more transactions than necessary to generate higher fees;

    - any economic interest in steering clients to certain products or an extra reward that a broker-dealer representative can receive for being the highest seller of a particular type of product;

- Brokers would have to offer a limited investment opportunity (as well as any other appropriate investment opportunity) to their clients first and not take the opportunity for themselves; and

- Brokers would have to disclose at the outset if they or their representatives have a material disciplinary history (rather than their customers having to take the initiative to look at FINRA's BrokerCheck for disciplinary information).

V. Investor Choice Would Not Be Inappropriately Limited by Imposing a Fiduciary Duty on Brokers

In Item (9) of the Study Release, the SEC requests comment on the potential impact on access of retail customers to the range of products and services offered by broker-dealers, access to personalized investment advice, and the availability of personalized advice and recommendations. We understand that these issues were included in the Dodd-Frank Act in large part to address concerns raised by broker-dealers and insurance agents that they may not be able to continue to recommend exclusively proprietary products or securities for which they receive additional compensation. We believe these concerns are unfounded. Under the fiduciary duty standard, with appropriate disclosure, broker-dealers generally should be able to manage a client's account investing only in a limited range of products or to recommend only their proprietary products.[29]

The Advisers Act fiduciary duty requires full disclosure of all material facts. Applied to the situation posed here, fiduciary duty would require a broker-dealer, at the inception of a

[29] Indeed, the language in Section 913(k)(2) of the Dodd-Frank Act is intended to confirm the current operation of the fiduciary duty standard in this and a number of other areas discussed below.

client relationship, to disclose the types of investments that the broker-dealer would be recommending to clients and to disclose if it will be recommending only proprietary or a limited range of investment products.[30] There may be situations where none of the proprietary products (because of their investment objectives, for example) would be in the best interests of a particular client. In these circumstances, the fiduciary duty appropriately may restrict the ability of the broker-dealer to recommend such products.

When recommending either proprietary products or products for which a broker-dealer receives compensation from a party other than the client, the fiduciary duty would require the broker-dealer to disclose specific information on potential conflicts of interest. Disclosure must include information about the compensation that the broker-dealer would receive and that the broker-dealer may have an incentive to recommend securities that offer it the greatest compensation.

Some also have argued that retail investors may have less access to certain types of securities that are not widely available because a broker-dealer that has these securities in its inventory may be prohibited from trading with a client as principal under the Advisers Act. As an initial matter, it is unclear whether the prohibition on principal transactions without transaction-by-transaction consent under section 206(3) of the Advisers Act would apply if the SEC adopted a fiduciary duty rule for broker-dealers because Section 913 of the Dodd-Frank Act references only Advisers Act sections 206(1) and 206(2) in requiring a minimum standard of care for broker-dealers. Given that principal trading involves a fundamental conflict of interest "and a substantial risk that the proprietary interests of the adviser will prevail over those of its clients,"[31] we believe that the duties imposed under section 206(3) should apply to broker-dealers that provide advice to retail clients. We recognize that there may be facts and circumstances under which it is appropriate for the SEC to provide relief pursuant to its broad exemptive authority under Advisers Act section 206A.[32] Regardless of whether the specific prophylactic provisions of section 206(3) apply, however, as fiduciaries, broker-dealers would be required to provide full and fair disclosure regarding the practice to clients, adopt policies and procedures to address the conflict, and ensure that a principal trade is fair and in the best interest of clients.

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[30] Investment advisers already have this obligation if, for example, they only invest in mutual funds for their clients and not in individual securities or they invest in mutual funds available on certain platforms or invest in proprietary mutual funds.

[31] Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Investment Advisers Act Rel. No. IA-2653 (Nov. 30, 2007) at 14.

[32] We understand that at the present time broker-dealers dually registered as investment advisers and investment advisers with affiliated broker-dealers have found the requirement for transaction-by-transaction disclosure and consent to engage in principal transactions to be difficult and one of the major challenges of operating under the Advisers Act. There are legitimate concerns in permitting fiduciaries to engage in principal trading with client accounts. The fact that to date the SEC has not been able to develop appropriate safeguards to permit principal trading on a more liberal basis reflects how important this issue is to the protection of retail clients of both investment advisers and broker-dealers.

VI. Extension of the Advisers Act Fiduciary Duty Would Not Result in Unreasonable Costs to or Restrictions on Broker-Dealers

Item (13) of the Study Release requests comment on the costs and expenses to broker-dealers resulting from potential changes in the regulatory requirements or legal standards. Moreover, in Items (12)(B) and (C) of the Study Release, the SEC requests comment on the potential impact on access to and the availability of personalized advice and recommendations.

We believe that there will be some costs involved in training broker-dealer personnel with respect to fiduciary duty and to develop a fiduciary culture.[33] We are of the view, however, that those who argue that certain business models will be destroyed by the change in legal standard are exaggerating the potential impact. Contrary to these assertions, the activities that are carried out by broker-dealers would not be prohibited or fundamentally undermined by the imposition of a fiduciary duty. Broker-dealers would remain free to pursue their essential business models.

The fiduciary duty for broker-dealers should operate in the same manner as it does for investment advisers. Broker-dealers who provide investment advice to retail clients must act in the best interests of their clients and place the interests of their clients before their own. As with investment advisers, the fiduciary duty would apply to those activities and services to which broker-dealers and their clients have agreed. To the extent that an agreed upon service constitutes investment advice, the broker's fiduciary duty would apply to that service. In this regard, broker-dealers would have to ensure that they are not holding themselves out as offering more advisory services than they are prepared to perform under this standard. The fiduciary duty, however, would not require broker-dealers to undertake services to which they have not explicitly or implicitly agreed. Where no such promise is made or implied, no fiduciary obligation to provide such services would exist.

The fiduciary duty under the Advisers Act generally does not prohibit a particular type of activity or compensation arrangement but requires disclosure and/or mitigation of potential conflicts of interest that a particular arrangement or transaction may pose. If the SEC imposes a fiduciary duty on broker-dealers for the provision of personalized investment advice to retail clients, the most significant changes to the broker-dealers' obligations and to the broker-dealers' business models generally would be the requirement on broker-dealers to manage potential conflicts of interest and to make appropriate upfront disclosures to clients regarding potential conflicts of interest, compensation, and other material facts. Most important, the extension of the fiduciary duty to broker-dealers who provide investment advice would require these broker-dealers to develop a fiduciary culture among those who provide personalized investment advice to retail clients to act in the best interests of their clients and to place the interests of the clients above their own. Imposing the fiduciary duty on broker-dealers in this fashion would be unequivocally beneficial to retail investors.

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[33] Many broker-dealers that provide advice are already dually registered and, therefore, should be well-equipped to provide such training.

Those who are not familiar with the fiduciary culture have expressed specific concerns regarding the impact of imposing a fiduciary duty on the broker-dealer business models. For example, some have voiced concerns that broker-dealers would no longer be able to receive commission-based compensation. Under the fiduciary duty standard, a broker-dealer would be able to provide investment planning services and provide other types of investment advice and still be compensated by commissions, provided that it has made appropriate disclosures regarding potential conflicts of interest. This disclosure would include providing information about the potential incentive for broker-dealers to engage in more transactions than necessary to generate higher fees for themselves. Investment advisers that are paid on a commission basis are explicitly required to make these types of disclosures.[34]

Others have argued that a fiduciary duty would obligate broker-dealers who provide investment planning services or who provide a specific security recommendation to monitor the investments made by the clients at the recommendation of broker-dealers on an ongoing basis and that broker-dealers would no longer be able to provide these services if these obligations attached. We disagree with this premise. Unless the broker-dealer entered into an agreement (implicitly or explicitly) with the client to monitor the client's portfolios or it is implied in the relationship, the broker-dealer, even as a fiduciary, would not have an obligation to monitor the financial condition of the client or the investments to determine whether they continue to meet the investment objectives of the client or to suggest adjustments regarding the recommended portfolio.[35] The nature of the relationship between the broker-dealer and its client would dictate whether there is an ongoing responsibility with respect to the client.

Similarly, there has been some concern regarding the length of time a client may rely on a specific recommendation by a broker-dealer in a fiduciary context. We believe that unless a fiduciary has agreed to continue updating a client regarding a recommendation, a client may continue to rely on that recommendation only for a reasonable period of time or until there are changes to the client's circumstances or new developments in the market that a reasonable person would believe may change a recommendation about a particular security.

Finally, broker-dealers often may have investor information centers or departments that provide information requested by investors on certain products. Some have voiced

[34] See Item 5.E of Form ADV, Part 2A (requiring an adviser that receives compensation attributable to the sale of a security or other investment product., *e.g.*, brokerage commissions, or whose personnel receive such compensation, to disclose this practice and the conflict of interest it creates, and to describe how the adviser addresses this conflict).

[35] Similarly, investment advisers that only provide a financial plan even as a fiduciary do not have an obligation to continuously monitor the financial conditions of their clients unless there was an implicit or explicit agreement for such a service. Broker-dealers may be concerned about state law fiduciary duty cases in which the courts have found that they had a continuing duty to monitor. In these cases, the courts found that the broker-dealers in those situations had de facto *discretionary authority*. By its definition, discretionary authority entails continuous monitoring. Absent discretionary authority or "constructive" discretion, a broker-dealer has no duty to monitor the client's investments or warn the client about potential investment risks after the execution of the transaction. *See e.g.*, Leib v. Merrill Lynch 461 F.Supp. 951 (D.C.Mich., 1978); Robinson v. Merrill Lynch, Pierce, Fenner & Smith, Inc. 337 F. Supp. 107 (N.D. Ala. 1971).

concern about the fiduciary duties imposed on personnel performing these functions. Personnel of broker-dealers who respond to requests for specific information regarding a product or a type of product should not be subject to a fiduciary standard as long as they only provide factual information about a product or investment and do not imply in any way that they are providing personalized investment advice.[36]

There is a continuum of potential relationships between clients and financial service providers. On one end of the spectrum are self-directed individuals who use brokerage platforms to execute their own investment decisions. In such cases, no advice is given and the Advisers Act fiduciary duty would not apply. At the other end of the spectrum are clients who receive ongoing discretionary investment advisory services. The Advisers Act fiduciary duty clearly applies to these activities on an ongoing basis. In between, the scope of the fiduciary duty will depend on the scope of the relationship. In such cases, appropriate disclosure is the key to ensuring investor protection.

VII. Advisers and Brokers Provide a Broad Range of Services

Item (11) of the Study Release requests information about the various services provided by investment advisers and broker-dealers. This information is important not only to the prior analysis of the application of the fiduciary duty to brokers providing various types of investment advice but also to the analysis of the substantive differences in the regulation of brokers and advisers called for by Items (6) and (7) of the Study Release.

The core activity of the vast majority of SEC-registered investment advisers is providing investment advice on a discretionary basis to clients; that is, they are granted authority by their clients to make investment decisions for their clients' portfolios on an ongoing basis.[37] In addition, some investment advisers provide financial planning services (*i.e.*, identifying investment goals and recommending strategies to achieve those goals that incorporate recommendations regarding securities), recommend specific securities (including

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[36] This approach is consistent with the Advisers Act. *See* 1092 Release, *supra* note 13; Olena Berg (pub. avail. Feb. 22, 1996) ("information that simply describes or explains the various investment options available through a plan, without including any analysis or recommendation with respect to those options, would not constitute 'investment advice' as that term is used in the Advisers Act"); *see also* Financial Strategies Inc., (pub. avail. Feb. 14, 1994) ("a person could be providing investment advice if, in the course of developing a financial program, he recommends that clients allocate certain percentages of their assets to life insurance, high yielding bonds, and mutual funds, or particular types of mutual funds, such as growth stock or money market funds").

[37] In 2010, 89% of all investment advisers reported having discretionary authority over client accounts. Indeed, of the $38 trillion assets under management reported by SEC-registered advisers in 2010, only $3.3 trillion were reported as non-discretionary. In addition, approximately 75% of advisers provide portfolio management for individuals and/or small business, 63% of advisers provide portfolio management for business or institutional clients (other than mutual funds); 41% of advisers provide financial planning services; and 31% of advisers assist clients to select other advisers. *See* Investment Adviser Association and National Regulatory Services, *Evolution/Revolution 2010: A Profile of the Investment Advisory Profession*, (expected publication date Sept. 2010) (2010 Evolution/Revolution Report). A complete list of advisory services and the percentages of investment advisers providing such services are provided in Appendix 4 of the 2010 Evolution/Revolution Report.

mutual funds) for the particular circumstances of a client, recommend a particular asset allocation plan, provide portfolio analysis and evaluation, assist in selection and monitoring of other advisers, or provide wealth management services. In addition to those activities, some of which are more oriented toward individual clients, investment advisers manage assets for mutual funds, hedge funds, private equity funds, pension plans, state and municipal entities, banks, charitable endowments, foundations, and corporations and serve as sub-advisers to funds offered by other advisers.

Broker-dealers engage in a wide range of activities, including selling securities, mutual funds, and variable annuities; selling interests in limited offerings or private placements; margin lending; securities lending; taking custody of client funds or securities; executing trades; acting as a market maker, dealer, syndicator or underwriter; acting as a distributor for issuers; or engaging in stock exchange floor activities. The substantive regulation of these non-advisory broker-dealer activities is not the focus of the study mandated by legislation. Investment advisers generally do not and, without broker-dealer registration or affiliation or an appropriate exemption, cannot engage in these activities. The one significant area of overlap between broker-dealers and advisers is the provision of investment advice.

This overlap is the intended focus of the study mandated by Section 913 of the Dodd-Frank Act. Thus, we do not address below other regulations applicable to advisers or broker-dealers that are not relevant to the provision of investment advice to retail clients - for example, the regulations under the Securities Exchange Act of 1934 (Exchange Act) and FINRA rules that apply to brokers in their capacity as market-makers or for executing securities transactions or the regulations under the Investment Company Act of 1940 that apply to advisers in their management of mutual funds.

VIII. The Substantive Regulations of Broker-Dealers and Advisers Differ in Some Respects

Items (6) and (7) of the Study Release request comment on the substantive differences in the regulation of broker-dealers and investment advisers when providing personalized investment advice and recommendations about securities to retail clients and where these regulations provide greater protection to retail customers.

The current regulatory landscape reflects the different purposes of the two main statutes regulating investment advisers and broker-dealers – the Advisers Act and the Exchange Act. The purpose of the Advisers Act is to address concerns with respect to the provision of investment advice while the purpose of the Exchange Act is to address concerns regarding the securities markets and their participants. Given that the regulations of broker-dealers and investment advisers developed under separate statutory frameworks with different purposes, there are, of course, substantive differences in these regulations. The Advisers Act is entirely focused on the provision of investment advice, whereas the Exchange Act and FINRA rules are focused on a much broader range of activities with a subset of provisions related to specific aspects of investment recommendations, which have been supplemented as broker-dealers offered more of these services.

As discussed above, there is currently a significant substantive difference between the standard of care for investment advisers and broker-dealers in providing investment advice, with the standard of care for investment advisers providing greater protection to retail customers than the standard of care for broker-dealers providing the same services. Although the difference in the standard of care is the most critical aspect of and the focus of the Section 913 study, there are differences in regulation in a number of other areas as well.[38] For example, different rules apply to disclosure, codes of ethics, proxy voting, contractual requirements, and advertising. The Advisers Act regulatory regime is specifically geared toward investment advisory activities and provides a flexible framework that permits the broad diversity of investment advisory firms to tailor their compliance programs to fit the nature of their firms.[39]

A more exhaustive comparison of the various regulations applicable to broker-dealers and investment advisers when providing investment advice is attached as Appendix A to this letter.[40]

Some in the broker-dealer community have argued that certain broker-dealer requirements are more protective of retail investors and should be applied to investment advisers. We are open to constructive dialogue with the Commission to enhance investment adviser regulation where appropriate. We note, however, that some of these arguments are based on misunderstandings about investment adviser regulation or are not based on apples-to-apples comparisons of the same activities. For example, some inappropriately compare rules governing sales of products with rules governing portfolio management. Although the Dodd-Frank Act specifically directs the SEC to consider adopting rules to prescribe a "standard of conduct" for broker-dealers that is no less stringent than the standard for advisers, if the SEC determines that a broader rulemaking is appropriate, we request that the SEC seek views on the general framework in a concept release. We would welcome the opportunity to provide our specific views to the Commission at such time.

[38] Despite their different regulatory roots, many requirements for brokers and advisers are similar. For example, both broker-dealers and advisers are required to have written policies and procedures for their compliance programs and to designate a chief compliance officer. Broker-dealers and advisers also are subject to similar regulations with respect to insider trading, supervisory duties, and safeguarding client information.

[39] See *supra* note 16

[40] Item (8) of the Study Release requests comment on existing standards of state regulators to protect retail clients. Under state law, investment advisers registered with the SEC are subject to the state anti-fraud laws and certain of their personnel who provide advice to retail clients are subject to state licensing and qualification requirements. With respect to state-registered investment advisers, in addition to licensing and qualification requirements, the states generally have investment adviser regulations that mirror or are substantially similar to SEC regulations of investment advisers.

IX. Regulatory, Examination, and Enforcement Resources Should Be More Effectively Deployed to Enforce the Standards of Care for Broker-Dealers and Investment Advisers

In Item (5) of the Study Release, the SEC requests comment on the regulatory, examination, and enforcement resources devoted to, and activities of the SEC, the states and a national securities association to enforce the standards of care for broker-dealers and investment advisers, including the effectiveness of the examinations, the frequency of the examinations, and the length of time of the examinations.

In addition to an appropriate standard of care, we believe a well-designed oversight program with inspections and examinations is critical to investor protection. In this regard, the IAA has long supported efforts by the SEC to improve its inspection program for investment advisers. Since the adoption of the compliance program rule – Rule 206(4)-7 – the SEC examinations and inspections of registered investment advisers have become more involved with voluminous document requests, intensive questioning of advisory personnel, and lengthy on-site inspections of advisers. We have worked with the staff to ensure that these efforts result in more effective examinations rather than just more laborious ones. We also have urged the SEC to ensure a robust and appropriate oversight program of the investment advisory profession.

Recently, Chairman Schapiro has taken meaningful steps to enhance the current oversight program.[41] We applaud these initiatives, which represent positive steps to strengthen the Commission's examination program,[42] and believe that the SEC must continue to work toward the shared goal of enhancing the effectiveness of investment adviser exams. In this regard, the SEC should focus its examination program on ferreting out fraud rather than focusing on technical violations (*i.e.*, a less "check-the-box" approach to examinations and more activities designed to assess and evaluate risk). The SEC can take a more substantive approach to examinations by hiring examiners with the requisite knowledge and experience in securities trading, portfolio management, valuation, derivatives, risk management and other important areas and has taken significant steps towards that end. The SEC also can leverage its resources by providing more training to its existing staff, conducting exams more focused on firms with higher risk profiles and practices, providing examiners with more tools and methodologies to detect fraud, and utilizing better the available technologies to improve surveillance and for the collection of useful data. In addition, the SEC should ensure that there is no internal incentive for the quantity of examinations conducted rather than the quality of examinations. We look forward to working with the Commission to continue to develop new ways to ensure an effective examination program for investment advisers.

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[41] *See SEC Oversight: Current State and Agenda, Hearing Before the H. Sub. Comm. on Capital Markets, Insurance and Government Sponsored Enterprises Hearing*, 111th Cong. (July 14, 2009) (statement by Mary L. Schapiro, Chairman, Sec. and Exch. Comm'n).

[42] *See* Letter from David G. Tittsworth, IAA, to The Hon. Mary L. Schapiro, Chairman, SEC (July 29, 2009).

With respect to funding of the SEC's oversight program, we also fully appreciate that the SEC has had insufficient resources to conduct examinations of the more than 11,000 advisers under its jurisdiction.[43] We have advocated for a number of measures to address the SEC's resource issue. We are pleased that the Dodd-Frank Act has authorized substantially increased funding for the SEC. Although we have long-supported self-funding for the SEC, the substantial increase in the budget for the SEC in addition to the $100 million reserve fund that the SEC can potentially use for long-term planning will significantly enhance the SEC's ability to regulate and examine SEC-registered investment advisers.[44]

The Dodd-Frank Act also coupled the increase in funding with a significant reduction in the number of advisers that the SEC will have to supervise. The raising of the threshold that separates federally-registered and state-registered advisers from $25 million to $100 million may shift up to 4,200 investment advisers – or 36% of currently registered advisory firms – from SEC regulation to various state regulators.[45]

We understand that the frequency with which broker-dealers are examined currently by FINRA and the SEC is higher than that for examinations of investment advisers by the SEC. We, however, disagree with the proposition that frequency of examinations or imposing an additional layer of regulation and examination will necessarily ensure an effective regulatory oversight program. Neither frequency of examinations nor multiple examinations by different regulatory or quasi-regulatory bodies assure that fraudulent activities will be caught in a timely manner. For example, the numerous inspections of the Bernard Madoff firm over a period of many years by the SEC and FINRA failed to uncover Madoff's massive fraudulent activities. This case clearly negates the argument that insufficient resources or lack of oversight was the cause of the failure to uncover the fraudulent activities of the firm.

Senator Dodd has expressed similar views, as he noted on the Senate floor with respect to this study:

> *In this review, the paramount issue is effectiveness. If regulatory examinations are frequent or lengthy but fail to identify significant misconduct--for example, examinations of Bernard L. Madoff Investment Securities, LLC--they waste resources and create an illusion of effective regulatory oversight that misleads the public.*[46]

As Senator Dodd noted, merely adding more examinations will not be an answer to this complex issue. In this regard, we urge the SEC to resist the illusory solution of

[43] *See* Tittsworth House Testimony, *supra* note 3.

[44] Section 991 of Dodd-Frank Act authorizes $1.3 billion for the SEC's budget in 2011 and increases the budget each year through 2015 to $2.25 billion.

[45] 2010 Evolution/Revolution Report, *supra* note 37.

[46] 156 Cong. Rec. S5920 (July 15, 2010) (statement of Senator Christopher Dodd).

recommending a self-regulatory organization (SRO) for investment advisers.[47] Although the concept of an SRO may appear on its face to solve the problem of increasing the frequency of examinations and therefore may be a tempting alternative to proper oversight, there are grave consequences to this approach. Other jurisdictions have tested the SRO model but have discarded the structure over time.[48] For example, in the late 1990's, the U.K. government transferred SRO regulatory powers to the FSA due to the complexities and inefficiencies of the U.K. SRO system.[49]

We have discussed in various fora the reasons why we oppose the idea of establishing an SRO for investment advisers and the significant issues with self-regulation.[50] We strongly believe the drawbacks to an SRO – which include inherent conflicts of interest, serious questions about transparency, accountability, and oversight, and added costs and bureaucracy – continue to outweigh the convenience of merely increasing the number of examinations and finding a "quick" solution.[51] Instead, we believe the SEC has the requisite expertise and investor protection mandate to be the most effective regulator of investment advisers. Therefore, we urge the SEC and its staff to develop a thoughtful approach to the supervision of investment advisers and develop new and innovative ways to make oversight of investment advisers more efficient and effective. Clients and customers of investment advisers will be the ultimate beneficiaries of a more creative approach.

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[47] Section 914 of the Dodd-Frank Act requires the SEC to study whether Congress should authorize the SEC to designate an SRO for investment advisers. We expect that the SEC will be seeking comments as it examines the SRO issue in greater detail. We will be providing comments on that study.

[48] "Whereas [SROs] are rather significant in the United States, they do not play any role in the United Kingdom and are hardly of any importance in Germany. In the EU, priority is given to the statutory approach to regulation." *See Securities Market Regulation: International Approaches*, Deutsche Bundesbank Monthly Report. (January 2006), available http://www.bundesbank.de/download/volkswirtschaft/mba/2006/200601mba_en_securities.pdf. Similarly, Australia does not have SROs as classically defined although exchange organizations have limited self-regulatory powers. *See* Prof. Berna Collier, Comm'r, ASIC, *Ensuring Capacity, Integrity and Accountability of the Regulator* (2005) available http://www.oecd.org/dataoecd/63/12/35174567.pdf.

[49] Even the chairman of the Securities and Investments Board, the most important of the SROs, "acknowledged that self-regulation had failed in the U.K. and seemed unable to restore investor confidence." *See Enhancing Investor Protection and the Regulation of Securities Markets, Hearing Before the S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 35-36 (Mar. 10, 2009) (statement of Prof. John C. Coffee, Jr., Columbia Univ. Law School).

[50] Tittsworth House Testimony, *supra* note 3, at 28-32; Tittsworth Senate Testimony, *supra* note 3, at 17-26.

[51] Given its clear preference for broker-dealer rules, we believe it would be inappropriate and counterproductive for FINRA to be designated as the SRO for investment advisers. Any regulator for investment advisers should, at a minimum, acknowledge and reflect the practices, culture, regulation, and oversight of the advisory profession. In light of its explicit statements favoring the broker-dealer regulatory model, FINRA clearly cannot serve in this capacity. Establishing FINRA as the SRO for investment advisers would eviscerate the "self" in self-regulation. Instead, it would lead to an inappropriate extension of the broker-dealer regulatory model to the advisory profession.

X. Recommendations to Congress and Rulemaking

As discussed in detail above, there is a significant regulatory gap between broker-dealers and investment advisers who provide personalized investment advice to retail investors because broker-dealers are not subject to a fiduciary duty. We request that the Commission remedy that gap by imposing the Advisers Act fiduciary duty on these broker-dealers.

With respect to rulemaking that would impose a fiduciary duty on broker-dealers providing personalized investment advice to retail investors, we have some initial suggestions. Because of the overarching nature of the fiduciary duty, which requires the interests of clients to be placed over those of a securities professional in every circumstance, the SEC does not need to develop an exhaustive list of rules to address conflicts that may exist now or in the future. In fact, it would be contrary to the interests of investor protection to attempt to define precisely all elements of the fiduciary duty. Instead, the SEC should proceed with its rulemaking and codify in a rule under section 15(k) of the Exchange Act that broker-dealers that provide personalized investment advice about securities to retail clients are fiduciaries to clients in providing those services and must act in their best interests.

Adopting a principles-based rule of conduct would prevent brokers-dealers – as the fiduciary duty under the Advisers Act has prevented investment advisers – from being able to exploit regulatory loopholes presented by rules addressing only specific activities and conflicts. The principles-based approach in the Advisers Act has provided the framework to address potential issues that would have been difficult to foresee when the Advisers Act was adopted 70 years ago.

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We appreciate the opportunity to present our views to the Commission on its study of the effectiveness of broker-dealer and investment adviser regulation. Please contact the undersigned, Karen L. Barr, General Counsel, or Jennifer S. Choi, Associate General Counsel, at (202) 293-4222 with any questions regarding these matters.

Respectfully submitted,

David G. Tittsworth
Executive Director

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey

The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Robert W. Cook, Director
Division of Trading and Markets

Andrew J. Donohue, Director
Division of Investment Management

Enclosure: Appendix A

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
Standard of Conduct			
General Anti-Fraud	Advisers Act Section 206 (prohibiting fraud and manipulative devices) '34 Act Section 10(b), Rule 10b-5	FINRA Rule 2020 (prohibiting fraud and manipulative devices) '34 Act Section 10(b), Rule 10b-5	Equivalent requirements. And, Section 10(b) and Rule 10b-5 apply to both advisers and brokers where appropriate.
Fiduciary Duty	All investment advisers have a comprehensive fiduciary duty to their clients. This duty includes the obligation to act in the client's best interests and place their client's interest above their own. It also includes the duty to make full and fair disclosure of all material facts, including potential conflicts of interest. Other obligations that flow from this fiduciary duty include: • the duty to seek best execution • the duty to provide suitable advice • the duty to have a reasonable basis for recommendations • the duty to maintain client confidentiality • the duty to vote proxies in best interest of client, and • the duty to disclose material financial and disciplinary information	No fiduciary duty. Under FINRA Rules: • "High Standard of Commercial Honor and Just and Equitable Principles of Trade" [FINRA Rule 2010] • "Suitability" [FINRA Rule 2310] • "Reasonable Basis" [FINRA Rule 2310]	The Advisers Act fiduciary duty is an overarching principle that applies to every aspect of an adviser's relationship with its clients and requires that an adviser conduct itself with its clients' best interests in mind at all times. This principle provides for more comprehensive investor protection, beyond that which can be addressed by specific rules that apply in specific circumstances. The SEC has broad authority to promulgate rules and interpret what constitutes breach of fiduciary duty by an adviser.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
Code of Ethics Personal Trading and Insider Trading	Rule 204A-1: • Written "code of ethics" (including requirements to comply with securities laws and firm standards of conduct, report violations, secure employee acknowledgements) • Holdings and transaction reporting requirements • Pre-approval of IPOs and private placements • Firm standards of business conduct that reflect fiduciary duties Advisers Act Section 204A requires policies and procedures to prevent insider trading.	NASD Rules 3040 & 3050: • Duty to disclose accounts • Broker must send duplicate account statements and confirms • Pre-approval for certain private securities transactions '34 Act Section 15(f) requires policies and procedures to prevent insider trading.	Advisers are required to adopt Codes of Ethics that "set out ideals for ethical conduct premised on fundamental principles of openness, integrity, honesty and trust." (Adopting Release). Codes address conflicts of interest and must ensure that advisory personnel cannot take advantage of their positions. Brokers are not subject to such requirements. Equivalent regulation already exists for insider trading.
Disclosure			
Initial and Ongoing Disclosure regarding *Investment Advice*	Advisers Act Section 206- Overarching fiduciary duty to disclose conflicts of interest, compensation arrangements, and other material facts. Advisers Act Section 203 and Rule 203-1 - Form ADV must be provided to each client at the outset of the advisory relationship.	No overarching duty '34 Act Rule 17a-5(c) requires disclosure of financial statements.	Advisers are required affirmatively to disclose substantial information about their businesses, their fees and compensation, their conflicts of interest, and their disciplinary history upfront to each client so that the client can evaluate these practices and conflicts in making decisions.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	– Part 1 available publicly: business information, disciplinary history, AUM, nature of business and types of clients, compensation arrangements, advisory activities, other business activities, affiliations, custody, participation or interest in client transactions, control persons – Part 2A available publicly: advisory business, fees and compensation, performance-based fees and side-by-side management, types of clients, methods of analysis, investment strategies, and risk of loss, conflicts of interest, disciplinary information, other financial industry activities and affiliations, code of ethics, participation or interest in client transactions and personal trading, brokerage practices, review of accounts, client referrals and other compensation, custody, investment discretion, proxy voting, financial information – Part 2B: for advisory personnel, disclosure of educational and		Brokers are not generally required to make upfront disclosure to their customers regarding all conflicts of interest, compensation arrangements, or disciplinary history. Advisers have an overarching fiduciary obligation to disclose conflicts of interest and other material information and brokers do not. Brokers' disclosure duties are very product and transaction-specific

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	business background, disciplinary history, other activities, and supervision		
Product disclosure	To the extent advisers sell products (e.g. as dual registrants), they must comply with FINRA rules.	FINRA Product-Specific Disclosure Rules: • Penny Stock • CMOs • Options • Variable Annuities • Margin Accounts	Equivalent requirements. To the extent advisers engage in product sales, they are also required to make product-specific disclosures.
Client Relationship/Sales Practices			
Contract Requirements:	Advisers Act Section 205: • Written Agreement (not required by rule but required in practice) • Performance Fees • No assignment w/o consent • Change in partnership • No hedge clauses	In general, written agreements not required by FINRA unless for certain types of products or accounts, e.g.: • Penny Stocks • Options • Margin Accounts Mandatory pre-dispute arbitration clauses *(industry practice)*	Advisers and brokers, though not required by rule, typically have written contracts with clients or customers. Advisory contracts are more substantive, reflecting personal ongoing relationships and contracts for personal services. Advisory contract requirements embed investor protections, while there are no equivalent broker contract rules. Most investment advisory agreements do not include mandatory pre-dispute arbitration

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
			clauses. Brokers' contracts typically eliminate the ability of their customers to choose their preferred dispute resolution venue.
Advertising - General (see below for performance advertising)	General anti-fraud provisions of Advisers Act Section 206 and no-action letters: • Must be fair and balanced • No material misstatements or omissions • Past performance no guarantee of future performance, etc. Advisers Act Rule 206(4)-1: • No testimonials No past specific recommendations (the conditions for use are so unworkable that the provision is in effect a prohibition) • No charts, graphs and other "devices" • No "free" reports • No material misstatements or omissions	General principles under NASD Rule 2210: • Must be fair and balanced • No material misstatements or omissions • Past performance no guarantee of future performance etc. Process under FINRA Rule 2210 for ads related to advice: • Sales Literature o Principal approved • Correspondence o Monitoring system required	Equivalent general anti-fraud-type principles. Advisers are prohibited from using client testimonials or mentioning past specific recommendations in their advertising, while brokers routinely use testimonials. Equivalent requirements on internal approval of advertising: FINRA requires principal approval for brokers, while the SEC compliance program rule construct provides a framework for firms to ensure that advertisements are not misleading and generally involve internal approval processes. Equivalent supervisory liability.
Performance Advertising	Anti-fraud liability – Advisers Act Rule 206(4)-1	General principles under NASD Rule 2210	Equivalent general anti-fraud-type principles.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	Extensive interpretive guidance exists through SEC enforcement proceedings and no-action letters, for example related to: • Composite construction • Gross of fees-net of fees • Investment of dividends • Benchmarks • Model results • Portability • Disclosure of conditions, limitations, strategies • Market or economic conditions The Global Investment Performance Standards (GIPS®) is a set of standardized, industry-wide principles that provide investment firms with guidance on how to calculate and report their investment results to clients and prospective clients. The standards address input data, calculation methodology, composite construction, disclosure, presentation and reporting and other topics. Claims of GIPS compliance are closely scrutinized by SEC staff.	FINRA interpretations under Rule 2210 relate only to mutual funds, e.g.: • 1/3/5/10 or Life of Fund performance data for mutual funds • Ban on use of hypothetical or synthetic performance for mutual funds • Use of rankings in mutual fund advertisements • Bond fund volatility ratings	Adviser performance records are highly scrutinized by SEC staff. There is generally no tracking of performance of brokerage accounts. Broker-dealers are subject to only specific mutual fund performance rules, which also apply to advisers that manage mutual funds. Many investment advisers comply with GIPS, performance standards issued by the CFA Institute, a professional organization that promotes ethical standards in performance presentation. Firms that claim compliance with GIPS must be verified by an independent third party or disclose that they are not so verified. Claims of GIPS compliance is closely scrutinized by SEC staff. Brokers generally do not claim compliance with GIPS.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
Use of solicitors	Cash Referral Fees [Advisers Act Rule 206(4)-3] Requires agreement with solicitor (including solicitor's agreement to comply with Advisers Act) and separate disclosure document to client with disclosure regarding solicitor's compensation and relationship with adviser. Must also disclose referral arrangements on Form ADV.	None related to investment advice or brokerage business generally (MSRB Rule G-38 for brokers in the municipal securities business)	Advisers are subject to detailed rules regarding use of solicitors, while brokers are not. Brokers generally are not required to make disclosures to customers regarding referrals. New rule 206(4)-5 bans advisers' use of solicitors for state and local pension plan business unless the solicitors are certain "regulated persons"; it has not proposed similar rules for brokers soliciting brokerage business other than for brokers in the municipal securities business.
Political contributions	SEC rule 206(4)-5 imposes two year time out on receipt of compensation if adviser or personnel make certain contributions to officials of government plans who have direct or indirect influence over selecting adviser.	MSRB Rule G-37 political contribution rules for brokers apply only to municipal securities business.	Advisers will be subject to substantial sanctions for contributions to state and local officials. Brokers are subject to equivalent rules only with respect to municipal securities business – not with respect to other services they provide to state and local pension plans (e.g., investment advice, brokerage). FINRA, however, has announced that it will consider proposing similar rules for brokers.
Investment Operations			
Best Execution	Covered under general fiduciary principles and compliance program rule (Advisers Act Rule (206(4)-7).	Brokers must use reasonable diligence to determine the best market for a security and transact for	Equivalent regulation in advisory context. The different ways the best execution duty works is

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	Advisers must seek to obtain the best price and execution on a qualitative basis, taking all factors into account. In selecting a broker, advisers must consider the full range and quality of services provided, execution capability, commission rate, financial responsibility, and responsiveness to the adviser.	the client so that the price is as favorable as possible under prevailing market conditions. [FINRA Rule 2320] Post-transaction disclosure obligation ["34 Act Rule 10b-10] Fair price and commissions [FINRA Rules 2230 and 2440]	appropriate for the differing activities involved.
Affiliated Principal Trading Agency Cross Transactions	Prohibited without prior transaction by transaction client consent [Advisers Act Section 206(3)] Client consent required [Advisers Act Rule 206(3)-2]		Advisers Act rules governing principal and agency cross transactions provide strong protections for clients because they require disclosure and consent prior to the transaction. Brokers only have to disclose capacity and terms in after-the-fact confirms.
Proxy Voting	Advisers Act Rule 206(4)-6: Advisers with proxy voting authority must have: • Written policies and procedures reasonably designed to ensure adviser votes client securities in best interest of clients • Public reporting for investment companies, client reporting upon	NYSE Rule 452 Brokers holding shares as custodian on behalf of customers may vote for customers in routine matters if they do not receive instructions but are not subject to any duties in connection therewith. They typically vote with management without any disclosure to their customers. Otherwise, brokers generally serve a	Advisers are subject to extensive proxy voting regime while brokers are not. Advisers must vote proxies in best interest of the client, and disclose and manage conflicts, while brokers have no such duties. Advisers Act rules reflect an adviser's fiduciary duties to exercise care and loyalty with respect to client assets, including voting rights, where the client delegates voting authority to the adviser.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	request for all clients • Duty to vote proxies in best interest of client, disclose and mitigate conflicts	ministerial function in transmitting proxy information to customers.	Brokers generally only have administrative functions with respect to proxies.
Compliance Program			
Compliance Program	Advisers Act Rule 206(4)-7: • Written policies and procedures • Designated CCO • Annual review	FINRA Rule 3010: • Written policies and procedures • Designated CCO	Equivalent regulation already exists.
Duty to Supervise	Advisers Act Section 203(e)(6)	FINRA Rule 3012	Equivalent regulation already exists. While the regulatory approaches (e.g. principle-based vs. rules based) are different, the results are the same.
Custody of Client Assets	Advisers Act Rule 206(4)-2: • Qualified Custodian must hold client funds and securities • Qualified Custodian must send client statements directly to clients • Independent verification of client assets	'34 Act Rule 15c3-3: • Segregation of Client Assets o Fully paid securities o Excess margin securities	Regulations are appropriately tailored to different services provided and address different functions. Broker regulations address the risks of acting as a qualified custodian physically maintaining client assets. Advisers that are not qualified custodian are not permitted to hold client assets. Adviser regulations require use of a qualified custodian and layer additional protections for risks

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	• Internal control report where adviser or affiliate serves as Qualified Custodian		posed by other types of access to client assets (*e.g.* deemed custody by acting as trustee for trust or as general partner for limited partnership).
AML	OFAC requirements Many firms have AML policies and procedures as a matter of practice.	OFAC requirements Written policies and procedures Designated AML Officer Independent annual audit Training KYC, CIP, SAR	Same OFAC requirements. Equivalent regulation already exists as a matter of practice. Similar to the custody rule, the differences in regulation are appropriate based on different functions. Advisers do not hold cash or process transactions. Advisers have long-term discretionary relationships with clients that do not generally involve frequent inflows and outflows into managed accounts. Brokers and banks are subject to AML rules because they process transactions and hold customer assets. They are in a position to monitor transactions and cash flows in accounts.
Privacy	Reg S-P Reg S-AM	Reg S-P Reg S-AM	Equivalent regulation already exists.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
Record-Keeping	Specified records [Advisers Act Rule 204-2] OCIE interpretive practice	Business as such ['34 Act Rules 17a-3 & 17a-4]	Both record-keeping regimes are outdated and in need of review and modernization. SEC should consider appropriate information to maintain rather than requiring that firms keep all records.
Registration & Licensing Requirements			
Registration	Advisers Act Section 203 and Rule 203-1: Submit Form ADV, Parts 1 and 2. Part 1 is available publicly now and Part 2 will be as of January 2011. In Part 1, provide business information, disciplinary history, AUM, nature of business and types of clients, compensation arrangements, advisory activities, other business activities, affiliations, custody, participation or interest in client transactions, control persons. In Part 2, provide further detail about advisory business, fees and compensation, conflicts of interest, disciplinary information, code of ethics, methods of analysis, investment strategies, financial industry activities and affiliations, custody, investment discretion, brokerage practices, proxy voting,	Section 15(b): Submit Form BD; in Form BD provide information about business, types of business engaged in, disciplinary history. Applicable state registrations. NASD Rule 1010 Series - Become member of SRO (*e.g.* FINRA). For FINRA, this includes submission of business and supervisory plan and firm rep interview.	Advisers must submit extensive information initially to SEC, particularly about conflicts of interest (Form BD is not as comprehensive as Form ADV). In order to register and complete Form ADV, advisers must assess and address conflicts of interest, assess risks and establish and implement a compliance program. Key issues with respect to the business and compliance program are disclosed in the registration process and to clients. Brokers have FINRA registration requirements in addition to Form BD. The compliance and supervisory aspects are equivalent in substance to the adviser requirements. Other information provided by brokers is more appropriate for the broker business model with its broad range of

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	financial information. File Form ADV and submit a fee ("notice file") with applicable states.		activities and risks.
Firm Financial Requirements	Form ADV, Part 2 - Audited balance sheet must be disclosed if adviser proposes to charge >$1,200 in fees per client 6 months or more in advance Part 2 requires advisers with discretion or custody to disclose to clients any financial condition that is reasonably likely to impair an adviser's ability to meet contractual commitments to clients. Affirmative disclosure obligations under fiduciary duty if an adviser suffers a materially adverse financial event. Bonding with respect to ERISA and investment company clients	• '34 Act Rule 15c3-2: Net Capital • Bonding • Financial Reporting • SIPC	Affirmative disclosure obligation for advisers appropriate to fiduciary relationship. Firm financial standing requirements important for brokers because they maintain custody of customer assets and engage in market making, underwriting, trade settlement and clearing and other activities integral to the functioning of the securities markets. Advisers – unless also registered as broker-dealers – do not engage in these broker-dealer activities or otherwise hold client assets.
Individual Qualification Disclosure	Form ADV Part 2B (brochure supplement) requires disclosure of individual's educational background, business experience, disciplinary information, other business activities, additional compensation and supervision.	No affirmative disclosure requirements to clients; disclosure to FINRA on Form U-4 of individuals' education and business background. Customers may seek out information on BrokerCheck.	An adviser's disclosure of qualifications of its adviser personnel (e.g. Form ADV Part 2B) is more meaningful for client evaluation than examination requirements.

Appendix A: IA/BD Comparison Matrix

Subject	SEC Registered Investment Adviser	Broker/Dealer	Similarities and Differences
	The supplement must be delivered for each supervised person who provides advisory services to that client.		
Licensing	State licensing of IA representatives (IARs)	State registration of BD representatives (RRs) FINRA Licensing Regime [FINRA Rule 1030]	Similar licensing regimes – filing of Form U-4 for IARs (all but 3 states) and RRs.
Examinations – advisory personnel Examinations – product sales	IARs must pass Series 65 or combination of Series 66/7; most portfolio managers have advanced degrees or CFA designation; many financial planners have CFP designation Series 7 if selling securities products (e.g. dual registrant) Series 6 if selling limited to mutual funds and variable annuities	No examination of investment management knowledge; may have CFP designation Continuing Education [FINRA Rule 1120] Series 6 or 7	Equivalent regulation; IARs tested on IA knowledge; RRs tested on BD knowledge. Both advisers and brokers are responsible for the training and competence of their personnel. To extent an individual employed by an adviser sells securities products the individual must be licensed and take Series 6 or 7 examination.
Examination and Oversight			
	OCIE	FINRA OCIE (in conjunction with FINRA, principally oversight role regarding FINRA exams)	Examinations and expertise by each regulator appropriate to types of services overseen by each. SEC resources should be bolstered to increase the frequency of adviser exams.

NRS INVESTMENT ADVISER ASSOCIATION

A Profile of the Investment Adviser Profession

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Introduction

The Investment Adviser Association and National Regulatory Services are pleased to present our tenth annual Evolution Revolution report—a profile of the SEC-registered investment adviser profession. This report identifies significant trends and developments based on information that investment advisers are required to file with the U.S. Securities and Exchange Commission.

This report follows enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which will dramatically change the database of SEC-registered investment advisers. For example, the new law increases the assets under management (AUM) threshold for registering with the SEC to $100 million (from $25 million). This change alone will shift 3,500-4,000 SEC-registered investment advisers to state regulators. In addition, the law requires hedge fund and private equity fund advisers with $150 million AUM or more to register with the SEC under the Investment Advisers Act. These and other provisions will have profound consequences for the advisory profession.

This report includes more data than in previous years, much of which appears in the appendices. For example, we have included data for all ten years in *Appendix 10*.

We hope that this report will contribute to a better understanding of the diverse investment advisory profession. We welcome your feedback and comments.

Executive Summary

Following are key findings of our 2010 report:

- *Assets under management.* Total assets under management (AUM) reported by all SEC-registered investment advisers rose $4.6 trillion (13.4%) between 2009 and 2010, from $34.0 trillion in 2009 to $38.6 trillion in 2010. The increase in assets was widespread and significant.
- *Number of advisers.* The total number of SEC investment adviser registrations increased slightly between 2009 and 2010. In 2010, 11,643 entities were registered with the SEC as investment advisers, compared to 11,257 in 2009.
- *Asset concentration.* A few large investment advisory firms continue to manage a disproportionate share of total assets. 508 advisory firms (4.4% of all SEC-registered investment advisers) reported managing more than $10 billion in assets, yet collectively accounted for approximately 83.3% of all assets ($32.1 trillion). Of these, only 64 reported AUM of $100 billion or more, but these mega-firms accounted for $18.7 trillion total AUM (48.4%). The number of firms with $100 billion AUM or more grew from 61 in 2009 to 64 in 2010 (4.9% increase). Firms with $50-100 billion AUM grew from 65 in 2009 to 81 in 2010 (24.6% increase).
- *Smaller advisers.* The vast majority of SEC-registered investment advisers are small businesses. In 2010, 9,641 investment advisers reported managing less than $1 billion in assets (82.8%). Of these, 4,228 (36.3%) reported managing between $25 million and $100 million in assets. 10,574 advisers (90.8%) reported 50 or fewer employees (not including clerical workers). Of these, 8,054 advisers (69.2%) reported 10 or fewer employees.
- *Hedge fund advisers.* The number of advisers that specialized in hedge funds (i.e., those that reported more than 75% of their clientele as hedge funds or other pooled investment vehicles) declined for the fourth straight year to 1,271 or 10.9% of all advisers. By comparison, hedge fund advisers accounted for 16.1% of all advisers in 2006 when they numbered 1,661. Going forward, we expect the number of private fund advisers to grow, given the mandate in the Dodd-Frank Act requiring hedge fund and private equity fund advisers with at least $150 million AUM to register with the SEC under the Investment Advisers Act by July 21, 2011.
- *Advisers with custody.* The number of advisers reporting that they or a related person have custody of client assets fell from 32.3% in 2009 to 30.8% in 2010. This reduction may result from advisers making changes in certain accounts with respect to which they were deemed to have custody in order to avoid surprise audits for such accounts required by new SEC rules.
- *10 years of data.* As a special feature in this year's report we have attached a series of appendices providing additional statistical detail on reported filings including one that provides a 10-year compilation of statistics. *See Appendix 10.*

2010 "Typical" SEC-Registered Investment Adviser

- U.S.-based corporation
- Exercised discretionary authority over most accounts
- $100.6 million assets under management (median)
- 1-5 employees (median)
- 26-100 clients (median)
- 118 Accounts (median)
- Clients included individuals, high net worth individuals, and pension and profit sharing plans

Explanation of Report Data

This report is based on Form ADV, Part 1 data filed by SEC-registered investment advisers with the SEC as of April 18, 2010. Advisers are required to file information electronically using the Investment Adviser Registration Depository (IARD) system. SEC regulations require investment advisers to update Form ADV, Part 1, no later than 90 days after the end of the adviser's fiscal year. Because the overwhelming majority of investment advisers (92.1%) operate on a calendar-year basis, the data we are using represents the most current information available for 2010.

SEC-registered advisers generally manage $25 million or more in assets. Advisers with less than $25 million AUM generally are required to register with the state in which their principal office is located.[1] The $25 million AUM threshold was established when Congress enacted the National Securities Markets Improvement Act of 1996 (NSMIA). The recently adopted Dodd-Frank Act will increase AUM threshold to $100 million while permitting SEC registration for an adviser that otherwise would be required to file in 15 states, subject generally to state registration and examination requirements.

Form ADV, Part 1 has significant limitations and anomalies. Please consult the text of Form ADV (available on the SEC's web site) for a more thorough understanding of the underlying data included in this report. Further, the SEC instructions for Form ADV, Part 1 permit more than one adviser to report the same assets and accounts under certain circumstances (*e.g.* sub-advisory relationships). Therefore, aggregate figures may be overstated.

IAA and NRS have independently tabulated all data in this report. Whenever a number is rounded, it is rounded from the original data source. [2]

1 More than 15,000 investment advisers are registered with the states according to IA-Info™, NRS' database of investment adviser information (April 2010). This report focuses solely on SEC-registered investment advisers.

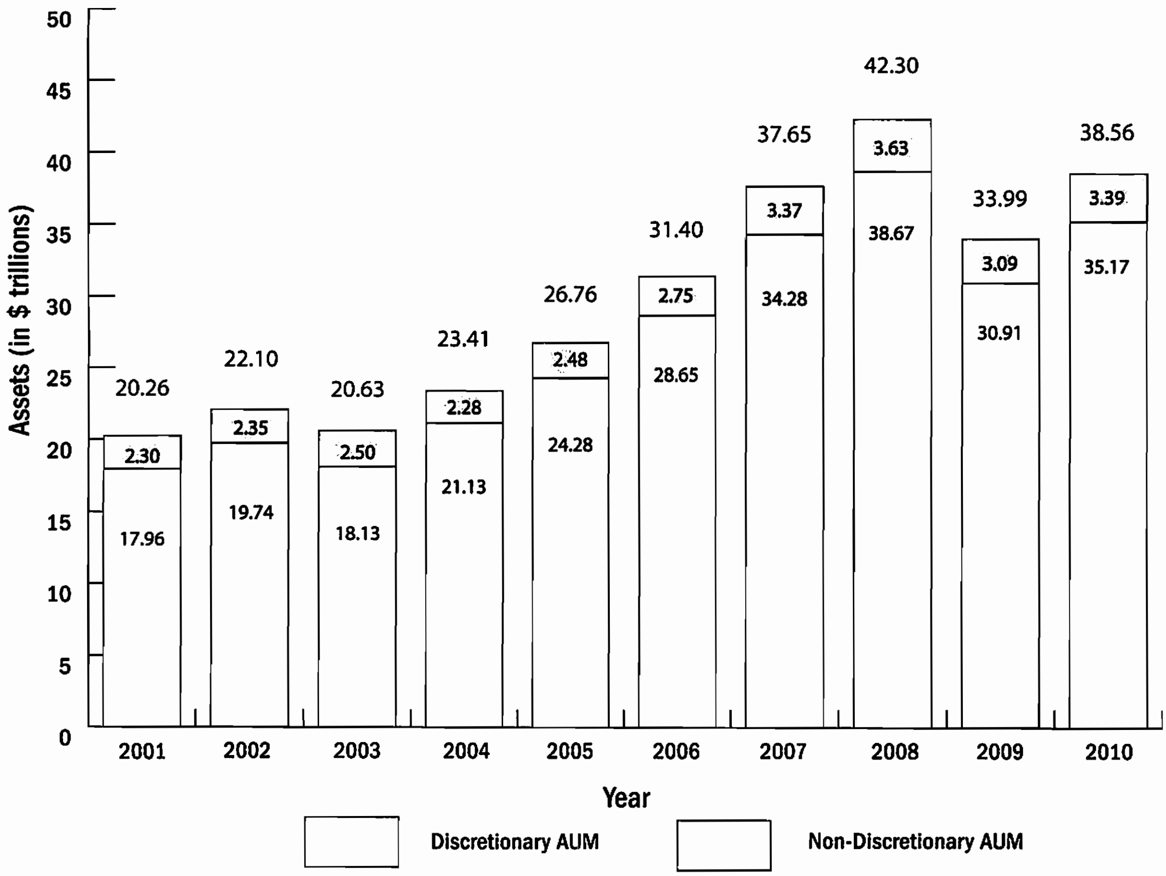
2 The practice of tabulating all facts directly from the source data may create situations where complementary percents do not sum to a complete 100%.

Assets Under Management

Total assets under management (AUM) reported by investment advisers rose significantly in 2010, recovering some of the losses experienced in 2009. Advisers reported an aggregate total AUM of $38.6 trillion, an increase of $4.6 trillion representing 13.4% growth from $34.0 trillion in 2009.

Over the past decade, AUM has grown fairly steadily except for the 2008-2009 "correction." Also, advisers have been fairly predictable in managing assets with discretionary authority in approximately 90 percent of accounts. This year's data show that 8.8% of AUM is non-discretionary and the remaining 91.2% is with discretionary authority.

Chart 1: Assets Under Management Comparison 2001-2010



AUM is highly concentrated at a few extremely large advisers. In fact, the 64 (.5%) advisers reporting AUM of $100 billion or more account for $18.7 trillion total AUM (48.4%)—nearly half of all AUM. The "average" AUM reported by investment advisers was $3.3 billion—significantly more than the $110.6 million mid-point of firms' AUM (See median AUM of advisers under "Typical Investment Adviser," above). See *Appendix 1, Chart 6* for a comparison of the relative size of AUM by categories for 2010 compared to the percentage of firms and total AUM in those categories.

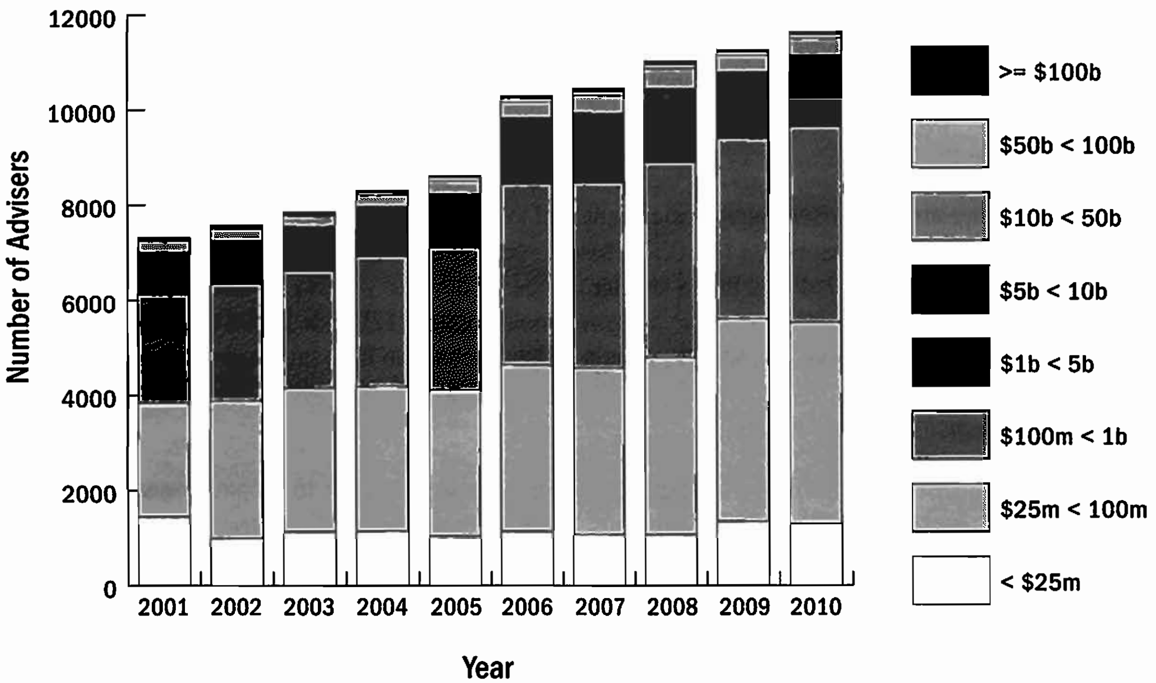
In 2010, investment advisers reported in aggregate 14.7 million discretionary accounts, 4.5 million non-discretionary accounts, and 19.2 million total accounts. This is a 2.8% increase from 2009 when advisers reported 18.6 million total accounts. Advisers registered in both 2009 and 2010 reported a decrease of 679,543 accounts but newly registered advisers reported 1,652,904 accounts, overcoming both the loss of accounts from 2009-2010 advisers and the loss of 450,337 accounts from de-registered advisers.

See *Appendix 1* for more data on assets under management.

Number of SEC-Registered Investment Advisers

The number of SEC-registered investment advisers increased by 3.4% in 2010 to a total of 11,643. Unlike 2009, the number of advisers in all AUM categories above $100 million experienced some growth in 2010. The number of advisers with $100 million or more in AUM increased by 461 (8.2%) from 2009. Advisers with $50 billion to $100 billion in assets under management grew from 65 to 81 (24.6%). Conversely, the under-$100 million categories experienced a decline of 75 advisers (1.3%).

Chart 2: Number of SEC-Registered Investment Advisers by AUM Category



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
All Advisers	7,322	7,581	7,852	8,302	8,614	10,290	10,446	11,030	11,257	11,643
■ ≥ $100b	45	52	48	52	56	62	75	82	61	64
▣ $50b < 100b	35	37	39	46	51	65	77	90	65	81
▣ $10b < 50b	231	237	221	250	285	334	367	409	346	363
■ $5b < 10b	190	203	199	206	211	237	284	327	301	318
■ $1b < 5b	705	708	727	828	915	1,149	1,173	1,235	1,096	1,176
▣ $100m < 1b	2,297	2,480	2,474	2,747	2,993	3,812	3,904	4,096	3,780	4,108
▣ $25m < 100m	2,381	2,875	3,020	3,036	3,068	3,492	3,489	3,720	4,259	4,228
< $25m	1,438	989	1,124	1,137	1,035	1,139	1,077	1,071	1,349	1,305

For additional information regarding the changes in the number of advisers by AUM category, please refer to *Appendix 2, Chart 8*. Similarly, *Appendix 1, Chart 6* provides more details regarding the Number of Adviser Firms to Relative Size of AUM categories.

Clients of Investment Advisers

SEC-registered advisers provide services to a wide variety of clients, including individuals, pension plans, trusts, corporations, endowments, foundations, mutual funds, and other pooled investment vehicles. Form ADV requires advisers to report various client types within certain percentage ranges. See *Appendix 3, Chart 9*.

Individual clients

7,623 (65.5%) advisory firms reported that individuals make up approximately 50% or more of their clients. These firms represent $9.97 trillion in AUM (25.8%) which total includes assets of clients other than individuals. Consistent with previous years, the vast majority of all advisers, 8,699 (74.7%), reported that their clients include at least some individuals. Of these, 8,480 (72.8% of all advisers) serve "high net worth individuals" and 7,468 (64.1% of all advisers) offer services to "retail" clients.

Institutional clients

SEC-registered investment advisers serve a wide variety of institutional clients. 6,565 (56.4%) reported that they advise profit-sharing plans, 5,708 (49.0%) advise corporations, and 4,847 (41.6%) advise charitable organizations. IARD data also indicate that a smaller number of advisers provide services to investment companies (1,664 or 14.3%), state or municipal government entities (1,336 or 11.5%), and banking or thrift institutions (947 or 8.1%). These percentages remain largely unchanged from the previous year.

Other Pooled Vehicles/Hedge Funds

In 2010, 3,116 advisers (26.8%) reported that they provide advisory services to "pooled investment vehicles" other than investment companies and pension plans. These other pooled investment vehicles may include hedge funds, private equity funds, and venture capital funds. This number remains virtually unchanged from 3,115 in 2009.

This year, 1,271 advisory firms reported that "other pooled investment vehicles" constituted more than 75% of their clients (we refer to these advisers as "private fund specialists"), compared to 1,319 in 2009, a 3.6% decline. This result continues a trend of reduced numbers since 2006. Private fund specialists reported aggregate AUM of $2.5 trillion in 2010, up from $2.4 trillion in 2009 (a 4.2% increase).

The Dodd-Frank Act contains provisions that will remove the private adviser exemption and require hedge fund and private equity fund advisers with at least $150 million AUM to register with the SEC. Advisers will continue to be exempt if they advise only venture capital funds, small business investment companies or family offices. Also exempted are certain advisers registered with the CFTC. Based on these new provisions, the number of private fund specialists required to register with the SEC and reporting through the IARD system will surely increase in future years.

Number of Clients

Advisers reported serving approximately 30 million clients in 2010. The number of firms serving most of those accounts is very concentrated. 24 advisers serve approximately 23 million accounts (approximately 80.0%) ranging from 100,000 clients to 7.4 million accounts. Additionally, 1,184 advisers (10.2%) provided investment advisory services to 500 clients or more—up slightly from 1,136 last year for a 4.2% increase. These 1,184 firms serve approximately 94.7% of all adviser accounts. See *Appendix 3, Chart 10*.

Investment Adviser Compensation

Asset-based fees continue to be the predominant form of compensation in the investment advisory profession. 11,110 advisers reported charging asset-based fees in 2010, nearly the same as 2009, 2008, 2007, and 2006 (95.6%, 95.6%, 95.3%, and 95.4%, respectively). Hourly and fixed fee compensation methods, remain popular as well, with 4,289 advisers (36.8%) charging hourly fees—up a net 0.5% from 2009—and 5,281 advisers (45.4%) charging fixed fees—up a net 1.3% from 2009.

The percentage of advisers receiving performance-based fees saw yet another decrease to 3,253 advisers (27.8%)—down a net 1.0% from 2009 and down a net 6.6% from 2006.

As usual, one of the least used forms of compensation is "commissions", as only 1,038 advisers (8.9%) reported receiving commissions as compensation.

Characteristics of Investment Advisory Firms

Appendix 4 sets forth detailed data on the following categories included in Form ADV Part 1: Forms of Organization; Geographic Analysis; International Advisers; worldwide figures for registered advisers; Advisory Personnel; and Advisory Services.

Advisory Employees

Most investment advisers are small businesses. More than half of all advisers (50.8%) reported that they employed fewer than 6 non-clerical employees, and more than 90.8% of all advisers reported fewer than 51 such employees.

Registered Representatives

From 2001 to 2010, the percent of adviser firms engaged in broker-dealer business activities declined from 8.03% to 5.25%. Similarly, 2010 is the 10th consecutive year that advisers are employing a smaller percent of registered representatives of a broker-dealer. Approximately one-third of investment advisers (33.9%) reported having one or more such employees. Of advisers reporting 51 or more registered representatives (324 firms), more than half (185 or 57.1%) reported being actively engaged in business as a broker-dealer.

Chart 3: Number of Advisers by Number of Employees

Number of Employees	# of Advisers by all Employees	# of Advisers by # of Employees who perform investment advisory functions	# of Advisers by # of Employees who are registered representatives of a broker-dealer
Zero	N/A	168	7,702
1 to 5	5,913	7,648	2,416
6 to 10	2,141	1,654	539
11 to 50	2,520	1,640	662
51 to 250	762	404	189
251 to 500	136	55	42
501 to 1,000	76	38	42
More than 1,000	95	36	51

Third-Party Solicitors

Form ADV requires that advisers report a range of the number of firms or other persons soliciting advisory clients on the firm's behalf.[3] In 2010, 4,165 of all advisers (35.8%) reported one or more such third-party solicitors. Most of these advisers, 3,531, reported 1-5 third-party solicitors. 273 advisers reported 6-10 third-party solicitors, 263 reported 11-50, 69 reported 51-250, 16 reported 251-500, 7 reported 501-1,000, and 6 reported more than 1,000.

Interestingly, 606 of the 3,531 advisers that reported one or more third-party solicitor also reported that they or a related person do not, directly or indirectly, compensate any person for client referrals. This result suggests that these 606 advisers (17.1%) use third-party solicitors that are uncompensated, unless the forms were completed incorrectly.

Advisory Activities

Advisers in 2010 reported providing an average of 3 types of advisory activities. Advisers reporting portfolio management for individuals and/or small business rose to above three-quarters of all advisers. In addition to portfolio management activities, the three most prevalent activities of advisers are (1) financial planning services (41.05%), (2) selecting other advisers (31.06%), and (3) pension consulting services (17.38%). 1,500 (12.88%) advisers provide advisory services to investment companies (including mutual funds). The types of advisory activities remained fairly constant from 2009 to 2010. See *Appendix 4, Chart 14*.

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3 Form ADV instructs advisers to not count any of the adviser's employees and to count a firm only once (not each of the firm's employees that act as solicitors for the adviser).

Other Business Activities and Affiliations

7,782 (66.8%) advisers reported they are not engaged in other business activities than advisory services while 3,861 (33.2%) reported being engaged in a business other than giving investment advice. 2,947 investment advisers (25.3%) reported providing non-advisory products or services to advisory clients.[4] Only 611 (5.25%) of investment advisers also act as broker-dealers. 767 advisers declared that an "other" business was their primary business. Most categories remained relatively stable from last year. See Chart 4.

Chart 4: Non-Advisory Business of Investment Advisers

Non-Advisory Business	Number of Advisers 2009	Percentage of Advisers 2009	Number of Advisers 2010	Percentage of Advisers 2010
Broker-dealer	623	5.53%	611	5.25%
Reg. representative of a broker-dealer	955	8.48%	895	7.69%
Futures commission merchant or commodity pool operator/trading advisor	383	3.40%	378	3.25%
Real estate broker, dealer, or agent	92	0.82%	84	0.72%
Insurance broker or agent	1,422	12.63%	1,434	12.32%
Bank (including a separately identifiable department or division of a bank)	40	0.36%	37	0.32%
Other financial product salesperson	262	2.33%	263	2.26%
Other Non-Advisory Business	1,721	15.29%	1,774	15.24%

Again in 2010, a significant number of advisers (4,320, 37.1%) reported that they or a related person serve as a general partner in an investment-related limited partnership, manage an investment-related limited liability company, or advise any other "private fund," as defined under SEC rule 203(b)(3)-1.

Approximately 45% of advisers reported no industry affiliations, but more than half (6,401 or 55.0%) reported that they or a related person[5] have an affiliation with another type of financial service provider. See *Appendix 5, Chart 15*. These 6,401 advisers reported an average of 3 financial industry affiliations. Since our 2009 report, the percentage of advisers reporting each category of financial industry affiliations has declined.

Advisers with Custody

The number of advisers reporting that they have custody of client assets fell from 32.3% in 2009 to 30.8% in 2010. This reduction may result from advisers making changes in certain accounts with respect to which they were deemed to have custody in order to avoid surprise audits for such accounts required by new SEC rules.

The SEC's December 30, 2009 custody rule changes will require advisers to provide responses to additional questions on custody in their first annual updating to Form ADV after January 1, 2011. See *Appendix 8, Chart 18*, for more data on custody.

4 Interestingly, 625 advisers reported providing non-advisory products or services to advisory clients while not being "actively engaged" in a business other than giving investment advice. The SEC does not provide guidance on what constitutes being "actively engaged" in a business, so different thresholds may have been applied by advisers.

5 Form ADV defines related persons as all of adviser's advisory affiliates and any person that is under common control with the adviser.

Disciplinary Information

We note that more than 86% of investment advisers report no disciplinary history at all. Further information and observations about disciplinary information is presented in *Appendix 9*.

The SEC IARD web site was recently upgraded to add a tool to review disciplinary information about individuals affiliated with investment advisers. The new database searches public information on investment adviser representatives (IARs) registered with the states. Users of the IARD system now are able to access data about disciplinary actions involving specific investment adviser representatives based on Forms U-4, U-5, and U-6 filed with state regulators.

Appendix 1: SEC-Registered Investment Advisers AUM

Advisers registered in both 2009 and 2010 experienced a median AUM percentage increase of 14.6% from 2009 to 2010, and 7,329 of these advisers (69.8% of 10,505) reported at least some AUM growth. Newly registered advisers added $761 billion AUM, offsetting the loss of $760 billion AUM from de-registered advisers. The 1,138 new advisers in 2010 had on average accounts with lower balances of approximately $450 thousand each while the 752 de-registered firms since 2009 had on average higher client balances of approximately $1.7 million.

Chart 5: Total AUM of Advisers Registered 2009-2010 by AUM Category in 2009

	# of Advisers with			AUM Percentage Change		AUM Change
2009 AUM Category	AUM Increase	AUM Decrease	No AUM Change	Median Total	Aggregate Total	Aggregate Total (in billions)
< $25m	441	116	475	N/A%[6]	N/A% [6]	$ 224.99
$25 < 100m	3,036	696	315	16.57%	54.16%	$ 113.19
$100m < 1b	2,660	800	160	16.35%	49.65%	$ 583.74
$1b < 5b	707	310	33	12.96%	19.37%	$ 461.57
$5b < 10b	189	106	2	8.86%	24.24%	$ 512.03
$10b < 50b	215	115	6	12.80%	10.26%	$ 767.73
$50b < 100b	46	18	0	11.70%	10.32%	$ 456.70
≥ $100b	35	23	1	7.26%	9.39%	$ 1,449.52

6 This category of advisers with less than $25 million has no meaningful number included because the figure would need to include 143 investment advisers with no reported AUM in 2009 that now report AUM in 2010.

Chart 6: Relative Size of AUM Categories in 2010

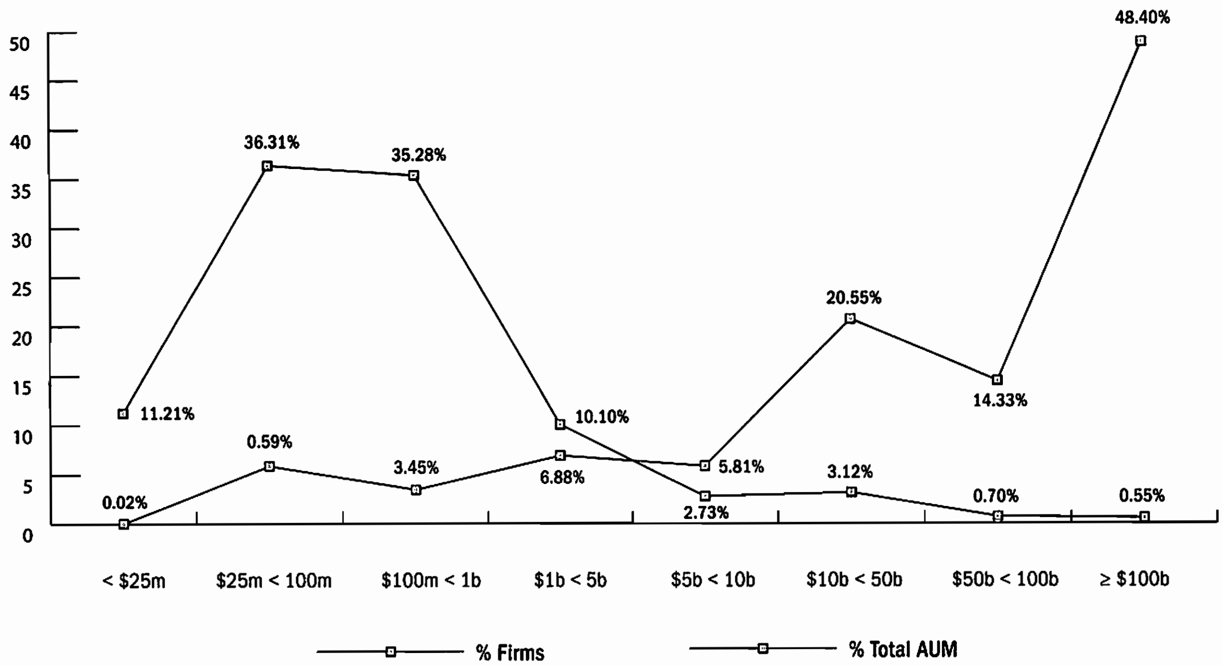


Chart 7: Total Accounts Held by Investment Advisers

Category of IA by AUM	Total Accounts	Median # of Accounts	Average AUM per Account
< $25m	23,933	5[7]	$ 247,563
$25 < 100m	880,170	138	$ 256,403
$100m < 1b	2,236,946	245	$ 594,040
$1b < 5b	4,381,407	52	$ 605,171
$5b < 10b	1,648,845	53	$ 1,358,078
$10b < 50b	4,005,451	103	$ 1,978,610
$50b < 100b	1,493,091	229	$ 3,700,176
≥ $100b	4,488,915	760	$ 4,157,634
All Advisers	19,158,758	118	$ 2,012,886

7 This figure excludes the 727 advisers with less than $25 million AUM reporting 0 total accounts. All advisers with less than $25 million AUM, including the 727 excluded advisers above, have 0 median total accounts.

Appendix 2: Number of SEC-Registered Investment Advisers

Chart 8: Change in the Number of Advisers by AUM Category

AUM Category	2009-2010 Net Change	2009-2010 Percent Change	2008-2009 Net Change	2008-2009 Percent Change	2001-2010 Average Annual Percent Change	2001-2010 Total Percent Change
< $25m	-44	-3.26%	278	25.96%	0.15%	-9.25%
$25m < 100m	-31	-0.73%	539	14.49%	6.83%	77.57%
$100m < 1b	328	8.68%	-316	-7.71%	7.04%	78.84%
$1b < 5b	80	7.30%	-139	-11.26%	6.28%	66.81%
$5b < 10b	17	5.65%	-26	-7.95%	6.20%	67.37%
$10b < 50b	17	4.91%	-63	-15.40%	5.67%	57.14%
$50b < 100b	15	23.08%	-25	-27.78%	10.89%	128.57%
≥ $100b	4	6.56%	-21	-25.61%	5.09%	44.44%
All Advisers	386	3.43%	227	2.06%	6.15%	59.01%

Appendix 3: Clients of Investment Advisers

Chart 9: Types of Advisory Clients by Percentage of Total Clientele

Type of Client	Percent of Business: None	Up to 10%	11-25%	26-50%	51-75%	More than 75%	Total Reporting > 0	Percent of All Advisers
Individuals (other than high net worth individuals)	4,175	1,541	1,215	1,702	1,464	1,546	7,468	64.14%
High net worth individuals	3,163	1,704	1,501	2,026	1,672	1,577	8,480	72.83%
Banking or thrift institutions	10,696	754	71	55	20	47	947	8.13%
Investment Companies (including mutual funds)	9,979	799	221	153	81	410	1,664	14.29%
Pension and profit sharing plans (other than plan participants)	5,078	4,621	973	499	173	299	6,565	56.39%
Other pooled investment vehicles (e.g. hedge funds)	8,527	1,125	288	262	170	1,271	3,116	26.76%
Charitable organizations	6,796	4,239	433	118	32	25	4,847	41.63%
Corporations or other businesses not listed above	5,935	4,711	582	228	82	105	5,708	49.02%
State or municipal government entities	10,307	948	196	96	36	60	1,336	11.48%
Other	10,493	638	188	112	47	165	1,150	9.88%

Chart 10: Number and Percentage of Advisers by Number of Clients

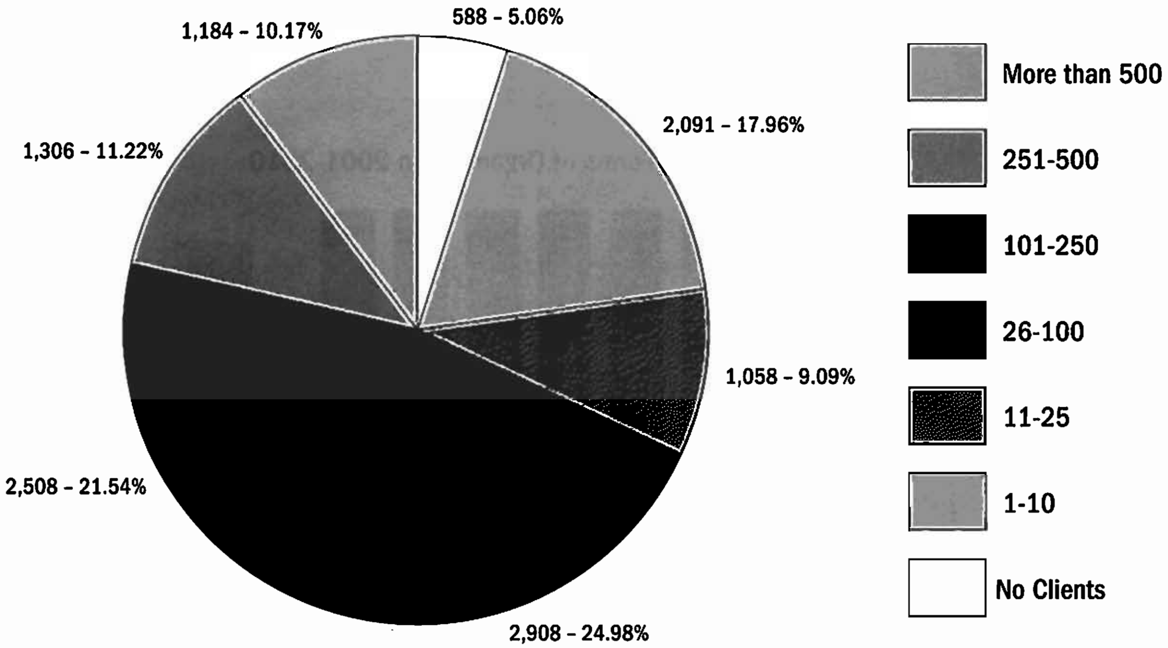


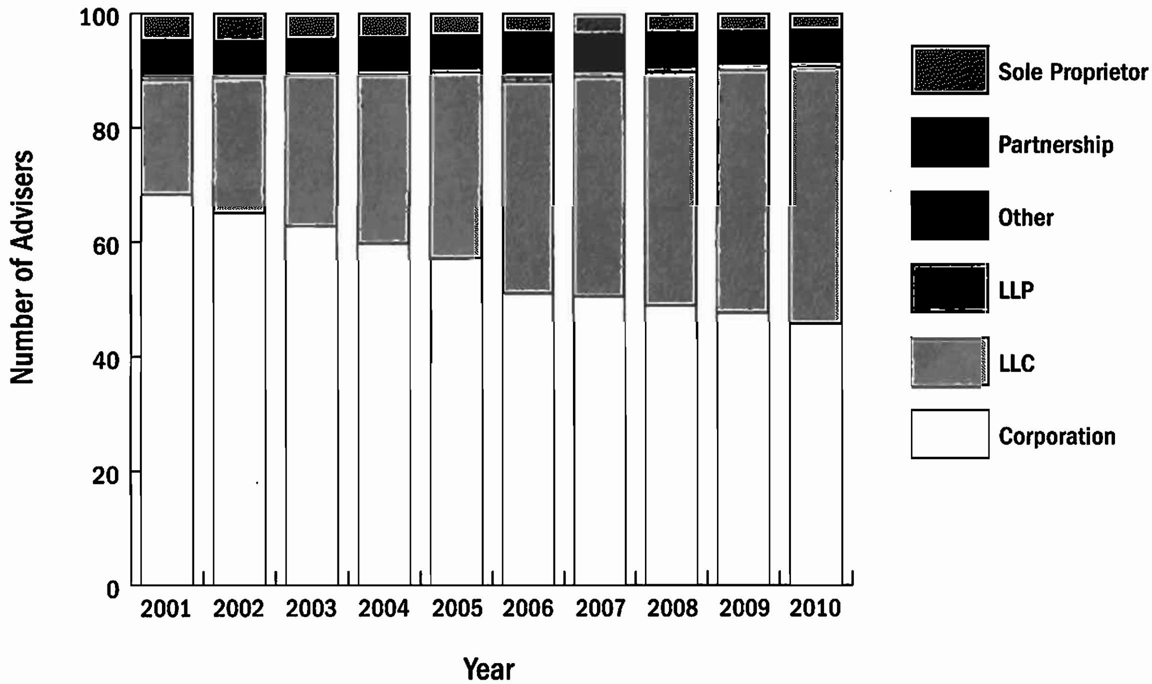
Chart 11: Investment Adviser Compensation

Category of IA Compensation	2007		2008		2009		2010	
	Number of Advisers	Percent of All Advisers	Number of Advisers	Percent of All Advisers	Number of Advisers	Percent of All Advisers	Number of Advisers	Percent of All Advisers
Percent of Client's AUM	9,964	95.39%	10,541	95.57%	10,760	95.58%	11,110	95.42%
Hourly Charges	3,474	33.26%	3,855	34.95%	4,087	36.31%	4,289	36.84%
Subscription Fees	174	1.67%	168	1.52%	170	1.51%	164	1.41%
Fixed Fees	4,326	41.41%	4,717	42.77%	4,963	44.09%	5,281	45.36%
Commissions	975	9.33%	1,025	9.29%	1,048	9.31%	1,038	8.92%
Performance-Based Fees	3,319	31.77%	3,362	30.48%	3,238	28.76%	3,233	27.78%
Other	1,052	10.07%	1,155	10.47%	1,240	11.02%	1,305	11.21%

Appendix 4: Characteristics of Investment Advisory Firms
ADV Items 1, 3, and 5

Form of Organization - ADV Item 3

Chart 12: Adviser Forms of Organization 2001-2010



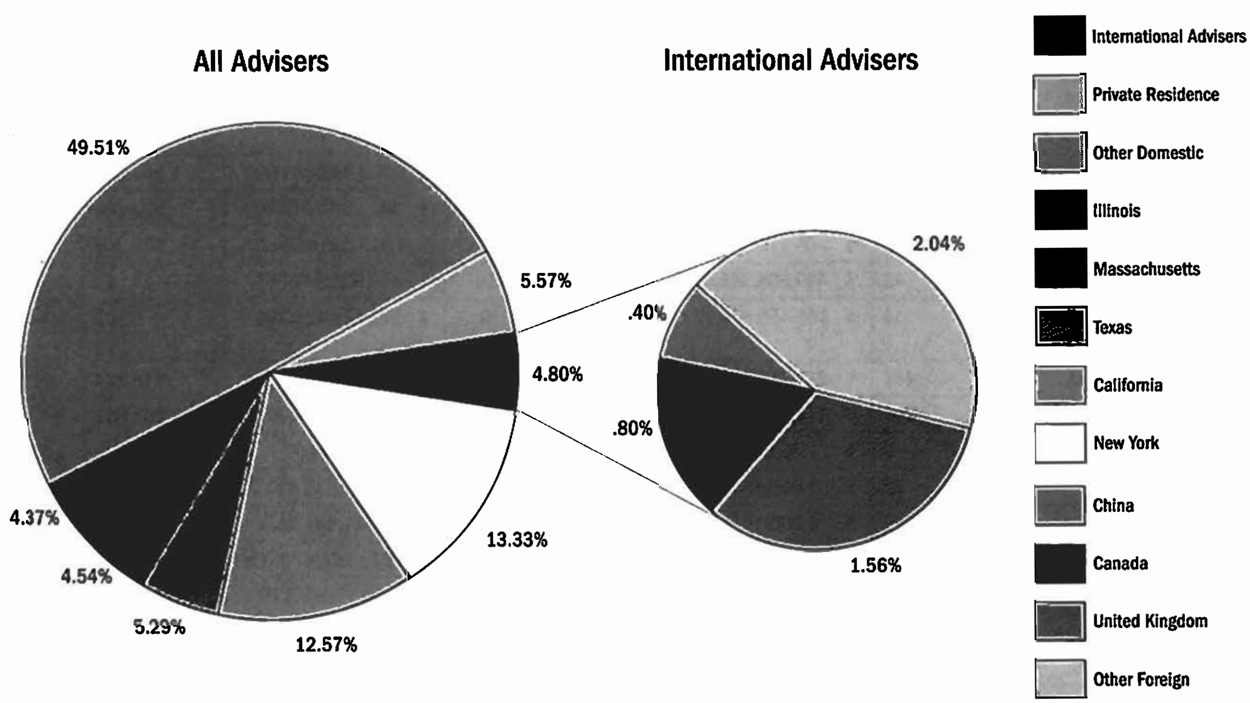
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Sole Proprietor	4.65%	4.91%	4.48%	4.28%	3.88%	3.40%	3.48%	3.34%	3.11%	2.83%
Partnership	4.68%	4.14%	3.78%	3.63%	3.52%	4.29%	4.01%	3.68%	3.30%	3.23%
Other	1.61%	1.71%	1.91%	2.12%	2.24%	2.67%	2.49%	2.37%	2.42%	2.42%
LLP	0.80%	0.69%	0.69%	0.75%	0.79%	1.65%	1.11%	1.07%	1.04%	1.00%
LLC	20.02%	23.59%	26.39%	29.49%	32.37%	36.95%	38.39%	40.58%	42.46%	44.81%
Corporation	68.25%	64.97%	62.75%	59.74%	57.21%	51.04%	50.53%	48.97%	47.67%	45.71%

Chart 12 displays the relative size of each form of organization category during the last ten years with relevant percentages (*Appendix 10* has the actual numbers, if desired). An increasingly large percentage of investment advisers have reported being organized as an LLC, and if this pattern continues, "LLC" will likely surpass "corporation" as the most common form of investment adviser organization by 2011.

Geographic Analysis[8] - ADV Item 1

In 2010, 10,994 investment advisers (94.4% of all advisers) provided either a principal office address or a mailing address that was not a private residence. Private residence addresses are unavailable for this report. Most of these non-private addresses (94.9%) are in the United States. The following chart demonstrates the distribution of principal addresses of investment advisers by state and certain countries. [9]

Chart 13: Number of Investment Advisers by Location



When AUM and account numbers are aggregated based on an adviser's address, New York advisers reported 21.4% of all AUM and 20.7% of all accounts. California advisers and Massachusetts advisers reported the second and third most AUM (both at 14.8% of all AUM).

Nearly one quarter of investment advisers, 2,791 or 24.0%, reported being organized under the laws of Delaware. The next two most reported states for organization were California (1,139 or 9.8% of all advisers) and New York (631 or 5.4% of all advisers).

8 Advisers enter IARD data for this section as free-form text. This report standardizes such information for presentation by, among other things correcting clear typographical errors, misspellings, semantically different terminology, and incomplete addresses. The geographic analysis in this report may use approximate location, but where possible uses an adviser's reported "principal office and place of business" address, mailing address, and/or the state or country under whose laws the adviser reported being organized.

9 This report may contain certain distortions from using the "principal office and place of business address" by, for example, applying the total assets of certain multistate or multinational advisers to one location. Other advisers not providing an address may be missed in geographic allocations. For calculations, this report utilizes the adviser's public mailing address of the principal office, if available. Advisers providing only a private residence address are listed as a separate category of Private Residences (4.37%). This report uses a public mailing address in lieu of a private principal office address for 207 investment advisers.

SEC-Registered Investment Advisers Full Geographic Data – U.S. and Foreign

	Data Aggregated by Address					Data Aggregated by State/Country of Legal Organization
State/Territory	Number of Advisers	Discretionary AUM	Non-Discretionary AUM	Total AUM	Total Accounts	Number of Advisers
TOTAL	**11,643**	**$ 35,173,482,366,250**	**$ 3,390,958,458,752**	**$ 38,564,440,825,002**	**19,158,758**	**11,643**
UNITED STATES	**10,435**	**$ 30,879,154,205,951**	**$ 3,110,874,994,150**	**$ 33,990,029,200,101**	**15,976,165**	**10,778**
ALABAMA	79	$ 35,958,629,496	$ 64,964,393,425	$ 100,923,022,921	46,485	63
ALASKA	8	$ 15,593,474,150	$ 181,012,340	$ 15,774,486,490	1,844	7
ARIZONA	130	$ 138,499,759,308	$ 4,243,230,417	$ 142,742,989,725	77,384	119
ARKANSAS	37	$ 8,658,818,508	$ 1,294,725,659	$ 9,953,544,167	18,761	38
CALIFORNIA	1,464	$ 5,408,660,309,415	$ 314,832,975,681	$ 5,723,493,285,096	1,965,373	1,139
COLORADO	275	$ 277,877,324,526	$ 24,287,720,209	$ 302,165,044,735	523,462	224
CONNECTICUT	408	$ 966,110,556,382	$ 347,454,600,225	$ 1,313,565,156,607	102,969	199
DELAWARE	42	$ 449,688,385,592	$ 11,240,461,469	$ 460,928,847,061	13,661	2,791
DISTRICT OF COLUMBIA	49	$ 165,455,864,224	$ 7,220,597,030	$ 172,676,461,254	6,302	16
FLORIDA	467	$ 298,717,676,590	$ 87,040,689,593	$ 385,758,366,183	446,274	429
GEORGIA	244	$ 474,040,192,828	$ 38,296,285,877	$ 512,336,478,705	203,851	224
GUAM	2	$ 35,000,000	$ 226,000,000	$ 261,000,000	700	2
HAWAII	22	$ 8,016,860,382	$ 1,235,173,251	$ 9,252,033,633	6,799	23
IDAHO	25	$ 8,500,161,436	$ 341,673,166	$ 8,841,834,602	9,522	26
ILLINOIS	509	$ 1,582,393,489,903	$ 242,273,987,856	$ 1,824,667,477,759	1,106,715	343
INDIANA	118	$ 69,773,559,773	$ 20,484,011,173	$ 90,257,570,946	105,766	116
IOWA	67	$ 306,464,320,936	$ 63,121,242,365	$ 369,585,563,301	142,872	58
KANSAS	105	$ 99,733,194,349	$ 7,159,988,761	$ 106,893,183,110	104,372	83
KENTUCKY	38	$ 18,948,298,579	$ 10,595,209,029	$ 29,543,507,608	23,139	34
LOUISIANA	55	$ 16,705,715,766	$ 2,362,289,888	$ 19,068,005,654	24,387	56
MAINE	24	$ 5,377,193,362	$ 146,094,531	$ 5,523,287,893	11,597	29
MARYLAND	228	$ 638,481,168,633	$ 32,030,947,674	$ 670,512,116,307	249,875	192
MASSACHUSETTS	529	$ 5,530,537,896,901	$ 171,606,685,885	$ 5,702,144,582,786	1,147,693	334
MICHIGAN	231	$ 115,657,360,612	$ 17,258,396,359	$ 132,915,756,971	132,872	224
MINNESOTA	208	$ 554,510,473,628	$ 103,243,013,480	$ 657,753,487,108	938,976	176
MISSISSIPPI	24	$ 7,315,577,997	$ 1,973,254,133	$ 9,288,832,130	8,119	22
MISSOURI	150	$ 300,204,075,353	$ 167,015,030,999	$ 467,219,106,352	1,061,172	148
MONTANA	16	$ 6,195,569,826	$ 2,787,639,913	$ 8,983,209,739	25,326	14
NEBRASKA	61	$ 28,652,627,798	$ 7,027,352,451	$ 35,679,980,249	124,232	59
NEVADA	41	$ 11,081,470,442	$ 700,846,756	$ 11,782,317,198	11,720	71
NEW HAMPSHIRE	64	$ 9,934,887,843	$ 4,028,568,849	$ 13,963,456,692	21,061	57
NEW JERSEY	312	$ 1,284,172,071,432	$ 132,934,500,960	$ 1,417,106,572,392	923,466	251
NEW MEXICO	25	$ 54,628,953,266	$ 428,042,259	$ 55,056,995,525	16,737	22

State/Territory	Number of Advisers	Discretionary AUM	Non-Discretionary AUM	Total AUM	Total Accounts	Data Aggregated by State/Country of Legal Organization Number of Advisers
	Data Aggregated by Address					
NEW YORK	1,552	$ 7,547,116,631,533	$ 702,066,884,140	$ 8,249,183,515,673	3,965,885	631
NORTH CAROLINA	180	$ 100,130,990,113	$ 44,688,731,483	$ 144,819,721,596	88,438	165
NORTH DAKOTA	5	$ 464,906,198	$ 53,911,595	$ 518,817,793	3,649	5
OHIO	317	$ 210,727,138,997	$ 62,021,376,536	$ 272,748,515,533	403,403	300
OKLAHOMA	64	$ 11,886,315,574	$ 10,036,492,558	$ 21,922,808,132	24,762	59
OREGON	128	$ 50,193,059,070	$ 39,867,323,037	$ 90,060,382,107	62,410	118
PENNSYLVANIA	447	$ 2,443,086,477,967	$ 104,440,581,486	$ 2,547,527,059,453	503,979	356
PUERTO RICO	8	$ 4,820,517,967	$ 2,219,488,013	$ 7,040,005,980	1,464	8
RHODE ISLAND	44	$ 32,603,658,145	$ 477,027,529	$ 33,080,685,674	20,773	38
SOUTH CAROLINA	69	$ 8,601,928,722	$ 1,801,504,650	$ 10,403,433,372	21,610	60
SOUTH DAKOTA	4	$ 274,400,439	$ 327,355,356	$ 601,755,795	2,706	6
TENNESSEE	141	$ 106,970,163,051	$ 11,164,405,191	$ 118,134,568,242	104,019	132
TEXAS	616	$ 660,995,222,560	$ 162,865,840,349	$ 823,861,062,909	664,124	520
UTAH	66	$ 12,288,470,053	$ 1,183,109,420	$ 13,471,579,473	20,752	66
VERMONT	24	$ 85,611,525,316	$ 13,029,471,121	$ 98,640,996,437	15,402	20
VIRGIN ISLANDS	4	$ 564,092,678	$ 6,500,000	$ 570,592,678	113	1
VIRGINIA	264	$ 148,462,786,047	$ 25,031,854,689	$ 173,494,640,736	173,736	239
WASHINGTON	232	$ 263,888,028,906	$ 23,118,591,479	$ 287,006,620,385	127,486	220
WEST VIRGINIA	11	$ 2,350,173,373	$ 398,250,678	$ 2,748,424,051	6,829	13
WISCONSIN	166	$ 281,187,151,191	$ 15,788,833,139	$ 296,975,984,330	157,090	151
WYOMING	36	$ 10,349,648,815	$ 250,820,038	$ 10,600,468,853	4,051	34

State/Territory	Number of Advisers	Discretionary AUM	Non-Discretionary AUM	Total AUM	Total Accounts	Data Aggregated by State/Country of Legal Organization Number of Advisers
	Data Aggregated by Address					
FOREIGN TOTAL:	**559**	**$ 4,266,049,338,930**	**$ 258,918,632,713**	**$ 4,524,967,971,643**	**3,110,734**	**543**
ARGENTINA	1	$ 68,000,000	$ 160,000,000	$ 228,000,000	1,120	1
AUSTRALIA	20	$ 83,481,063,220	$ 2,603,930,098	$ 86,084,993,318	707	21
AUSTRIA	2	$ 1,343,396,000	$ 39,327,310,000	$ 40,670,706,000	2,730	1
BAHAMAS	7	$ 57,348,940,250	$ -	$ 57,348,940,250	124	9
BAHRAIN	1	$ 3,932,521,678	$ 43,291,260	$ 3,975,812,938	61	-
BARBADOS	1	$ 603,015,065	$ -	$ 603,015,065	3	1
BELGIUM	1	$ 2,978,144,000	$ -	$ 2,978,144,000	64	1

		Data Aggregated by Address				Data Aggregated by State/Country of Legal Organization
State/Territory	Number of Advisers	Discretionary AUM	Non-Discretionary AUM	Total AUM	Total Accounts	Number of Advisers
BERMUDA	22	$ 57,326,705,263	$ 256,192,923	$ 57,582,898,186	1,305	23
BOLIVIA	1	$ -	$ -	$ -	-	-
BRAZIL	4	$ 10,188,541,815	$ -	$ 10,188,541,815	122	3
BRITISH VIRGIN ISLANDS	5	$ 1,729,618,193	$ 80,000	$ 1,729,698,193	386	14
CANADA	93	$ 610,663,638,870	$ 3,481,212,530	$ 614,144,851,400	75,549	86
CAYMAN ISLANDS	12	$ 5,317,302,168	$ 603,756,256	$ 5,921,058,424	82	32
CHILE	1	$ -	$ 203,232,131	$ 203,232,131	2	1
CHINA	46	$ 160,813,081,059	$ 7,483,036,362	$ 168,296,117,421	1,714	35
COSTA RICA	-	$ -	$ -	$ -	-	1
CYPRUS	2	$ 792,750,000	$ -	$ 792,750,000	6	2
DENMARK	2	$ 2,230,396,353	$ 18,618,397,071	$ 20,848,793,424	639	2
FRANCE	7	$ 12,284,475,697	$ 1,414,909,166	$ 13,699,384,863	215	6
GERMANY	4	$ 193,189,148,337	$ 9,053,539,133	$ 202,242,687,470	1,623	4
GREECE	1	$ 20,000,000	$ -	$ 20,000,000	2	-
GUERNSEY	6	$ 28,295,939,574	$ 148,446,580	$ 28,444,386,154	161	5
HUNGARY	1	$ -	$ -	$ -	-	1
INDIA	5	$ 9,353,518,689	$ 1,415,260,234	$ 10,768,778,923	2,541,050	5
IRELAND	9	$ 12,061,750,905	$ 500,000	$ 12,062,250,905	118	9
ISLE OF MAN	1	$ 2,563,171,802	$ 488,757,198	$ 3,051,929,000	39	2
ISRAEL	3	$ 1,660,104,463	$ 1,439,566	$ 1,661,544,029	1,272	3
ITALY	1	$ -	$ -	$ -	-	-
JAMAICA	2	$ -	$ -	$ -	-	1
JAPAN	17	$ 446,862,102,526	$ 77,687,530,627	$ 524,549,633,153	3,179	16
JERSEY	2	$ 4,940,000,000	$ -	$ 4,940,000,000	21	3
LUXEMBOURG	1	$ 1,271,058,650	$ -	$ 1,271,058,650	2	-
MAURITIUS	1	$ 3	$ -	$ 3	2	2
MEXICO	2	$ 435,260,740	$ -	$ 435,260,740	14	2
MONACO	1	$ 42,000,000	$ -	$ 42,000,000	1	-
NETHERLANDS	5	$ 23,255,102,146	$ -	$ 23,255,102,146	170	5
NEW ZEALAND	2	$ 25,914,917	$ -	$ 25,914,917	1	2
NORWAY	2	$ 1,550,211,402	$ -	$ 1,550,211,402	10	2
PANAMA	2	$ 17,310,936	$ 8,259,939	$ 25,570,875	87	2
ROMANIA	1	$ -	$ -	$ -	-	-
RUSSIA	2	$ 995,360,852	$ -	$ 995,360,852	242	-
SEYCHELLES	-	$ -	$ -	$ -	-	1
SINGAPORE	33	$ 157,955,038,728	$ 11,091,608,124	$ 169,046,646,852	1,061	30

	Data Aggregated by Address					Data Aggregated by State/Country of Legal Organization
State/Territory	Number of Advisers	Discretionary AUM	Non-Discretionary AUM	Total AUM	Total Accounts	Number of Advisers
SOUTH AFRICA	3	$ 10,117,562,052	$ -	$ 10,117,562,052	1,310	4
SOUTH KOREA	4	$ 6,185,841,737	$ 46,013,869	$ 6,231,855,606	595	4
SPAIN	2	$ 22,202,652,687	$ 141,751,638	$ 22,344,404,325	513	1
SWEDEN	1	$ 20,000,000	$ -	$ 20,000,000	100	1
SWITZERLAND	28	$ 113,378,841,276	$ 8,139,071,052	$ 121,517,912,328	4,317	21
TAIWAN	1	$ 3,496,504,445	$ -	$ 3,496,504,445	35	1
THAILAND	3	$ 19,179,789,924	$ 2,721,024,000	$ 21,900,813,924	418,846	3
TRINIDAD AND TOBAGO	1	$ 34,617,707	$ -	$ 34,617,707	1	1
UNITED ARAB EMIRATES	1	$ 14,000,000	$ 3,500,000	$ 17,500,000	15	-
UNITED KINGDOM	182	$ 2,195,791,882,286	$ 73,776,582,956	$ 2,269,568,465,242	51,023	172
URUGUAY	1	$ 33,062,515	$ -	$ 33,062,515	95	1
PRIVATE RESIDENCE	649	$ 28,278,821,369	$ 21,164,831,889	$ 49,443,653,258	71,859	N/A
NO INFORMATION PROVIDED	N/A	N/A	N/A	N/A	N/A	312

International Advisers

The SEC requires investment advisers to report if they are registered with any foreign financial regulatory authority—we designate these as international advisers. In 2010, 819 investment advisers reported such registration—representing 7.0% of all advisers (down from 7.6% in 2009). This lower number (819 instead of 846 in 2009) interrupts a steady increase in the number and percent of international advisers. This percent (7.0%) attributable to international advisers is the lowest level since 6.3% in 2005. Many of these international firms are large U.S. firms that operate internationally and manage more assets than a typical adviser.

In 2010, 559 of all advisers (4.8%) reported a foreign address as their principal office and place of business—designated foreign advisers. These advisers from 52 countries reported managing an aggregate of $4.5 trillion AUM (11.7% of all AUM) with 3.1 million accounts (16.2% of all accounts). A slightly smaller number of all advisers, 543 (4.7%), reported being organized under the laws of a foreign state or territory. Interestingly, 112 of the advisers with a foreign address (20.0%) and 108 of the advisers organized under foreign laws (19.9%) reported not being registered with a foreign financial regulatory authority.

Advisory Activities

Chart 14: Advisory Services of Investment Advisers

Type of Advisory Activity	Number of Advisers	Percentage of Advisers
Portfolio management for individuals and/or small businesses	8,756	75.20%
Portfolio management for businesses or institutional clients (other than IC's)	7,372	63.32%
Financial Planning Services	4,780	41.05%
Selection of other advisers	3,616	31.06%
Other	2,870	24.65%
Pension consulting services	2,023	17.38%
Portfolio management for investment companies	1,500	12.88%
Publications of periodicals or newsletters	759	6.52%
Market timing services	154	1.32%
Security ratings or pricing services	52	0.45%

Appendix 5: Investment Adviser Industry Affiliations

ADV Item 7

Financial Industry Affiliations

Chart 15: Financial Industry Affiliations

Adviser or related person is:	Number of Advisers	Percentage of Advisers
Broker-dealer, municipal securities dealer, or government securities broker or dealer	2,630	23.88%
Investment company (including mutual funds)	1,578	14.19%
Other investment adviser	3,491	30.83%
Futures commission merchant, commodity pool operator/trading adviser	851	8.02%
Banking or thrift institution	1,137	10.52%
Accountant or accounting firm	1,121	9.82%
Lawyer or law firm	645	5.71%
Insurance company or agency	2,025	17.59%
Pension consultant	719	6.56%
Real estate broker or dealer	595	5.44%
Sponsor or syndicator of limited partnerships	1,613	14.21%
None of the above	5,242	38.22%

Appendix 7: Participation or Interest in Client Transactions
ADV Item 8

Participation or Interest in Client Transactions

The "participation or interest" section of Form ADV is intended to assist the SEC in identifying actual and potential conflicts of interest between advisers, their related persons, and clients.

Like the "financial industry affiliations" question, the "participation or interest" section requires information on both an adviser and its related persons in each question. Thus, it is difficult to determine whether the responses apply to the specific adviser filing the form or to the adviser's related persons.

For 2010, more advisers disclosed that the firm or related persons; (1) also buy/sell securities for themselves that are recommended to clients (9,138 or 78.5%) and (2) receives research, services, or products on a soft dollar basis (7,100 or 61%).

A downward trend continues for advisers who disclose authority to determine the commissions paid to broker-dealers, *i.e.*, less than 55% (6,355). In contrast, almost 90% (10,391) of all advisers have discretionary authority to determine the amount and securities to be bought/sold.

All other categories reported are substantially similar (increases of 0.1% to 4.0%) compared to 2009 information.

Appendix 6: Basis for SEC Investment Adviser Registration
ADV Item 2

Basis for SEC Registration

Chart 16 shows the numerous ways an adviser can qualify for SEC registration and the numbers are consistent with the 2009 information.

Chart 16: Advisory Services of Investment Adviser

Type of Advisory Activity	Number of Advisers	Percentage of Advisers
AUM of $25 million or more	10,132	87.02%
Principal office and place of business in Wyoming	46	0.40%
Principal office and place of business outside of U.S.	530	4.55%
IA to registered investment company	1,086	9.33%
Designated nationally recognized statistical rating organization	1	0.01%
Pension consultant that qualifies for exemption in rule 203A-2(b)	344	2.95%
Rule 203A-2(c) - affiliated with an IA	421	3.62%
Rule 203A-2(d) - newly formed IA	196	1.68%
Rule 203A-2(e) - multi-state adviser	40	0.34%
Rule 203A-2(f) - Internet IA	54	0.46%
SEC exemptive order	3	0.03%
No longer eligible for SEC registration	208	1.79%

Chart 16: Investment Advisers Participation or Interest in Client Transactions

Adviser or any related person:	Percentage of Advisers		Number of Advisers
Engages in principal transactions	7.63%		888
Buys/sells for itself securities (other than mutual fund shares) that the firm also recommends to advisory clients	78.48%		9,138
Recommends an investment product in which the firm has a proprietary interest	24.43%		2,844
Engages in agency cross transactions	5.29%		616
Recommends to clients securities in which it or a related person is an underwriter, general/managing partner, or purchaser representative	21.81%		2,539
Has a sales interest (other than broker-dealer/registered representative commissions) in securities recommended to advisory clients	11.43%		1,331
Has discretionary authority to determine the securities to be bought or sold for a client's account	89.30%		10,397
Has discretionary authority to determine the amount of securities to be bought or sold for a client's account	89.25%		10,391
Has discretionary authority to determine the broker or dealer to be used to trade securities for a client's account	63.35%		7,376
Has discretionary authority to determine the commission rates to be paid to a broker or dealer for a client's securities transactions	54.58%		6,245
Recommends brokers or dealers to clients	72.21%		8,407
Receives soft dollars	60.98%		7, 100
Compensates any person for client referrals	42.91%		4,996

Appendix 8: Custody
ADV Item 9

Chart 18: Investment Adviser Custody Information 2010

Custody Responses	Number of Advisers	Percent of Advisers
Adviser has custody of client cash/bank accounts	2,481	22.31%
Adviser has custody of client securities	2,352	20.20%
Related person has custody of client cash/bank accounts	2,292	19.69%
Related person has custody of client securities	2,181	18.73%
Adviser and/or related person has custody of cash, bank accounts, and/or securities (answered yes to at least one of the above questions)	3,592	30.85%

Appendix 9: Disciplinary Information
ADV Item 11

The disciplinary disclosure information used in this report is subject to certain limitations. The details from Form ADV are unavailable in aggregate form. Also, the information is provided for the advisory firm and its employees, officers, directors, and advisory affiliates for the past ten years, whether or not these persons or entities were affiliated with the reporting firm during that time. In addition, the same disciplinary event at one firm may be reported by multiple separate affiliates, and the same disciplinary event may generate affirmative answers to several different questions.

Subject to these limitations, we make the following observations:

- 10,086 of all investment advisers (86.6%) reported no disciplinary history at all.
- 1,557 of all investment advisers (13.4%) reported one or more answer(s) in the affirmative to Form ADV's disciplinary questions.

Of these 1,557 advisers responding affirmatively to one or more disciplinary question, the four most common responses are:

- 718 (6.2% of all advisers) responded that a federal regulatory agency (other than the SEC and CFTC), state regulatory agency, or foreign financial regulatory authority found it or an advisory affiliate to have been involved in a violation of investment-related regulations or statutes;
- 703 (6.0% of all advisers) responded that a self-regulatory organization or commodities exchange found it or an advisory affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC);
- 632 (5.4% of all advisers) responded that a federal regulatory agency (other than the SEC and CFTC), state regulatory agency, or foreign financial regulatory authority entered an order against it or an advisory affiliate in connection with an investment related activity;
- 420 (3.6% of all advisers) responded that the SEC or CFTC found it or an advisory affiliate to have been involved in a violation of SEC or CFTC regulations or statutes.

Appendix 10: A Decade of Select Evolution Revolution Data

The following data comes from Evolution Revolution Reports for the past 10 years. Entries may include numbers that have been corrected, rounded, or omitted. The compilation is not exhaustive, but represents much of the data we have collected from Form ADV filings by investment advisers over the past 10 years. Item numbers generally relate to questions on the SEC Form ADV but may be described more plainly in the preceding text or appendices to this report. These side by side displays permit quick observations of trends in reported numbers. The presentation generally follows the order in which Form ADV Part 1 asks its questions with a brief description of the item.

A Decade of Select Evolution Revolution Data

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	**7,322**	**7,581**	**7,852**	**8,302**	**8,614**	**10,290**	**10,446**	**11,030**	**11,257**	**11,643**
Number of Investment Advisers by:										
1I: Web Site	3,546	4,265	4,672	5,177	5,665	6,842	7,284	7,992	8,340	8,847
1L: Foreign Registration	379	460	488	513	541	825	797	835	846	819
Number of Investment Advisers by Basis of SEC Registration										
2A1: AUM	5,719	6,397	6,524	6,960	7,379	8,918	9,160	9,749	9,704	10,132
2A2: Wyoming IA	94	84	69	75	64	70	34	30	33	46
2A3: Foreign IA	229	303	311	319	328	588	515	516	525	530
2A4: IA to Investment Company of '40 Act	1,135	1,180	1,122	1,106	1,106	1,041	1,073	1,085	1,084	1,086
2A5: NRSRO	3	4	5	6	5	5	6	2	2	1
2A6: Pension Consultant IA	269	308	306	317	319	321	319	333	340	344
2A7: Rule 203A-2(c)	385	442	450	462	418	421	398	404	421	421
2A8: Newly Formed IA	86	109	169	199	137	225	158	164	165	196
2A9: Multi-State IA	57	61	57	49	44	50	50	46	36	40
2A10: Internet IA	5	8	13	17	25	26	33	36	40	54
2A11: Exempt	58	102	148	6	7	4	3	3	3	3
2A12: No Longer Eligible	N/A	N/A	N/A	116	102	115	135	118	328	208
3A: Form of Organization										
Corporation	4,538	4,925	4,927	4,960	4,928	5,252	5,278	5,401	5,366	5,322
Sole Prop	309	372	352	355	334	350	363	368	350	330
LLP	53	52	54	62	68	170	116	118	117	116
Partnership	311	314	297	301	303	441	419	406	372	376
LLC	1,331	1,788	2,072	2,448	2,788	3,802	4,010	4,476	4,780	5,217
Other	107	130	150	176	193	275	260	261	272	282

10 2001 data includes many incomplete Form ADV filings.

Total Number of Advisers	5/16 2001[10] 7,322	4/29 2002 7,581	4/8 2003 7,852	4/5 2004 8,302	4/20 2005 8,614	4/10 2006 10,290	4/8 2007 10,446	4/23 2008 11,030	4/10 2009 11,257	4/18 2010 11,643
5A: Number of Investment Advisers by Number of Non Clerical Employees										
1-5	3,092	3,681	3,859	4,162	4,235	4,971	5,110	5,427	5,653	5,913
6-10	1,297	1,441	1,440	1,521	1,635	2,059	2,013	2,081	2,058	2,141
11-50	1,510	1,663	1,742	1,795	1,901	2,291	2,319	2,434	2,456	2,520
51-250	511	538	551	565	574	686	704	784	782	762
251-500	81	98	91	97	102	107	127	127	132	136
501-1000	72	65	71	65	72	80	74	77	77	76
More than 1000	86	95	98	97	95	96	99	100	99	95
5B1: Number of Investment Advisers by Employees Performing Investment Advisory Functions										
0	159	198	179	176	157	184	182	180	183	168
1-5	4,226	4,921	5,093	5,468	5,634	6,662	6,781	7,147	7,335	7,648
6-10	1,037	1,114	1,176	1,211	1,282	1,596	1,544	1,611	1,621	1,654
11-50	906	1,003	1,044	1,066	1,141	1,391	1,457	1,559	1,592	1,640
51-250	231	252	260	270	291	350	352	402	392	404
251-500	45	50	53	64	52	49	63	55	57	55
501-1000	23	20	25	24	32	28	38	46	41	38
More than 1000	22	23	22	23	25	30	29	30	36	36
5B2: Number of Investment Advisers by Employees Who Are Registered Representatives of a Broker-Dealer										
0	3,721	4,308	4,508	4,832	5,144	6,584	6,706	7,134	7,322	7,702
1-5	1,794	2,044	2,078	2,185	2,171	2,322	2,331	2,393	2,425	2,416
6-10	401	440	468	494	505	503	499	546	526	539
11-50	470	503	504	484	481	544	575	614	643	662
51-250	151	168	177	179	182	203	192	203	199	189
251-500	33	44	43	57	48	53	53	44	43	42
501-1000	33	35	35	32	38	34	40	46	49	42
More than 1000	46	39	39	39	45	47	50	50	50	51
5B3: Number of Investment Advisers by Number of Firms or Other Persons Soliciting Advisory Clients on Their Behalf										
0	4,225	4,754	4,859	5,078	5,264	6,265	6,416	6,916	7,175	7,478
1-5	1,976	2,307	2,431	2,593	2,732	3,324	3,326	3,411	3,408	3,531
6-10	168	210	243	275	285	328	334	337	307	273
11-50	197	212	230	256	245	276	265	261	268	263
51-250	59	74	68	71	62	68	71	76	65	69
251-500	13	15	13	13	14	20	24	15	24	16
501-1000	7	7	5	10	9	7	7	8	3	7
More than 1000	4	2	3	6	3	2	3	6	7	6

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	7,322	7,581	7,852	8,302	8,614	10,290	10,446	11,030	11,257	11,643
5C: Number of Investment Advisers by Number of Advisory Clients										
0	251	365	434	505	468	535	513	519	510	588
1-10	1,141	1,359	1,444	1,487	1,543	2,426	2,205	2,150	2,066	2,091
11-25	620	725	730	802	818	919	968	1,005	1,028	1,058
26-100	1,834	2,025	2,034	2,133	2,199	2,472	2,571	2,784	2,858	2,908
101-250	1,424	1,598	1,635	1,666	1,760	1,946	2,061	2,304	2,415	2,508
251-500	748	815	842	907	961	1,024	1,098	1,175	1,244	1,306
More than 500	631	694	733	802	865	968	1,030	1,093	1,136	1,184
5D1: Number of Investment Advisers by Number of Individual (Not High-Net Worth) Clients										
None	2,503	2,887	3,014	3,205	3,259	4,422	4,153	4,125	4,069	4,175
up to 10%	1,026	1,160	1,164	1,220	1,232	1,346	1,398	1,490	1,463	1,541
11-25%	693	766	783	847	907	1,029	1,091	1,171	1,193	1,215
26-50%	831	980	1,034	1,083	1,188	1,279	1,395	1,549	1,584	1,702
51-75%	776	858	901	958	1,008	1,103	1,212	1,353	1,434	1,464
More than 75%	820	930	956	989	1,020	1,111	1,197	1,342	1,514	1,546
5D2: Number of Investment Advisers by Number of High-Net Worth Individual Clients										
None	1,766	2,049	2,159	2,316	2,369	3,403	3,155	3,124	3,063	3,163
up to 10%	1,135	1,302	1,320	1,316	1,352	1,436	1,492	1,606	1,737	1,704
11-25%	864	939	1,005	1,062	1,089	1,210	1,266	1,348	1,454	1,501
26-50%	1,083	1,250	1,273	1,344	1,413	1,588	1,721	1,871	1,926	2,026
51-75%	910	1,036	1,068	1,161	1,235	1,363	1,449	1,565	1,556	1,672
More than 75%	891	1,005	1,027	1,103	1,156	1,290	1,363	1,516	1,521	1,577
5D3: Number of Investment Advisers by Number of Banking/Thrift Institution Clients										
None	5,954	6,782	7,038	7,435	7,743	9,335	9,487	10,074	10,287	10,696
up to 10%	531	613	636	675	699	771	778	770	778	754
11-25%	65	75	76	87	77	92	80	81	78	71
26-50%	44	51	48	45	47	46	52	53	58	55
51-75%	10	10	14	17	10	8	12	15	14	20
More than 75%	45	50	40	43	38	38	37	37	42	47
5D4: Number of Investment Advisers by Number of Investment Company Clients										
None	5,257	6,081	6,345	6,813	7,143	8,723	8,872	9,412	9,615	9,979
up to 10%	644	707	703	704	708	785	769	788	795	799
11-25%	171	167	171	182	169	192	195	207	220	221
26-50%	121	136	146	133	131	140	140	143	151	153
51-75%	55	64	68	58	75	71	77	72	71	81
More than 75%	401	426	419	412	388	379	393	408	405	410

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	7,322	7,581	7,852	8,302	8,614	10,290	10,446	11,030	11,257	11,643
5D5: Number of Investment Advisers by Number of Pension & Profit Sharing Plan Clients										
None	2,375	2,808	3,015	3,274	3,388	4,693	4,592	4,832	4,892	5,078
up to 10%	2,534	2,870	2,978	3,174	3,377	3,684	3,951	4,270	4,452	4,621
11-25%	864	934	901	903	916	987	968	981	959	973
26-50%	467	502	500	496	477	470	497	512	495	499
51-75%	184	203	200	192	184	184	170	161	176	173
More than 75%	225	264	258	263	272	272	268	274	283	299
5D6: Number of Investment Advisers by Number of Other Pooled Investment Vehicle Clients										
None	5,272	5,962	6,090	6,396	6,503	6,919	7,284	7,844	8,142	8,527
up to 10%	710	801	816	854	904	1,014	1,047	1,082	1,110	1,125
11-25%	141	166	188	188	187	233	244	260	274	288
26-50%	128	157	159	161	177	259	256	252	238	262
51-75%	69	79	91	102	108	204	194	185	174	170
More than 75%	329	416	508	601	735	1,661	1,421	1,407	1,319	1,271
5D7: Number of Investment Advisers by Number of Charitable Organization Clients										
None	3,611	4,221	4,405	4,704	4,842	6,254	6,193	6,501	6,561	6,796
up to 10%	2,498	2,797	2,870	3,012	3,176	3,438	3,653	3,932	4,082	4,239
11-25%	377	393	400	399	423	438	431	431	438	433
26-50%	129	129	133	140	125	114	123	118	120	118
51-75%	18	22	24	27	29	28	24	27	36	32
More than 75%	16	17	20	20	19	18	22	21	20	25
5D8: Number of Investment Advisers by Number of Corporate or Other Business Clients Not Listed Above										
None	3,275	3,815	3,945	4,226	4,355	5,541	5,472	5,707	5,739	5,935
up to 10%	2,638	2,967	3,070	3,209	3,369	3,753	3,986	4,342	4,565	4,711
11-25%	408	465	487	510	546	590	582	571	539	582
26-50%	183	177	197	194	188	235	230	233	242	228
51-75%	49	52	57	55	56	69	70	70	67	82
More than 75%	96	105	96	108	100	102	106	107	105	105
5D9: Number of Investment Advisers by Number of State or Municipal Government Clients										
None	5,655	6,474	6,691	7,130	7,410	9,057	9,201	9,750	9,946	10,307
up to 10%	690	765	789	808	835	871	880	923	932	948
11-25%	146	160	178	173	197	196	196	191	197	196
26-50%	88	99	105	104	88	87	84	83	95	96
51-75%	31	33	37	31	28	32	31	33	30	36
More than 75%	39	50	52	56	56	47	54	50	57	60

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	**7,322**	**7,581**	**7,852**	**8,302**	**8,614**	**10,290**	**10,446**	**11,030**	**11,257**	**11,643**
5D10: Number of Investment Advisers by Number of Other Clients Not Listed Above										
None	6,044	6,891	7,133	7,554	7,778	9,340	9,441	9,996	10,193	10,493
up to 10%	361	396	419	431	494	538	570	586	605	638
11-25%	90	104	108	104	119	145	138	171	171	188
26-50%	46	57	63	69	71	93	109	106	102	112
51-75%	21	29	26	30	31	33	46	39	45	47
More than 75%	87	104	103	114	121	141	142	132	141	165
Number of Investment Advisers by Compensation Arrangements										
5E1: % of AUM	6,286	7,143	7,402	7,834	8,146	9,808	9,964	10,541	10,760	11,110
5E2: Hourly Charges	1,988	2,318	2,488	2,739	2,919	3,192	3,874	3,855	4,087	4,289
5E3: Subscription Fees	131	149	144	160	161	175	174	168	170	164
5E4: Fixed Fees	2,407	2,806	3,079	3,386	3,610	3,999	4,326	4,717	4,963	5,281
5E5: Commissions	798	914	945	955	912	966	975	1,025	1,048	1,038
5E6: Performance	1,493	1,766	1,891	2,082	2,291	3,541	3,319	3,362	3,238	3,233
5E7: Other	497	605	687	750	800	948	1,052	1,155	1,240	1,305
Number of Investment Advisers Providing Continuous and Regular Supervisory or Management Services to Securities Portfolios										
5F1	6,303	7,150	7,399	7,838	8,193	9,850	10,020	10,634	10,852	11,219
5F2A: Number of Investment Advisers by Discretionary AUM Category										
<= 25M (2008 and after, < 25)	2,346	2,115	2,284	2,261	2,158	2,312	2,287	2,319	2,708	2,636
25M+-100M (2008 and after, <100)	1,969	2,298	2,391	2,495	2,560	3,062	3,033	3,281	3,658	3,680
100M+-1B (2008 and after, <1b)	1,975	2,098	2,098	2,351	2,581	3,338	3,379	3,533	3,253	3,583
1B+-5B (2008 and after, <5b)	583	614	636	697	766	1,003	1,017	1,083	950	1,013
5B+-10B (2008 and after, <10b)	173	172	169	186	190	212	258	296	266	279
10B+-50B (2008 and after, <50b)	206	202	198	224	258	298	331	355	308	318
50B+-100B (2008 and after, <100b)	28	35	33	39	48	59	71	88	58	73
>= 100B	42	47	43	49	53	58	69	75	56	61

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	7,322	7,581	7,852	8,302	8,614	10,290	10,446	11,030	11,257	11,643
5F2B: Number of Investment Advisers by Non-Discretionary AUM Category										
<= 25M	5,586	5,615	5,905	6,250	6,452	7,890	7,939	8,317	8,638	8,909
25M+-100M	890	1,058	1,059	1,071	1,079	1,187	1,171	1,250	1,282	1,304
100M+-1B	608	661	655	715	792	923	995	1,071	1,001	1,061
1B+-5B	161	169	159	191	212	225	235	269	229	254
5B+-10B	35	31	30	31	34	42	44	57	50	58
10B+-50B	35	42	37	41	41	50	54	55	49	46
50B+-100B	5	3	4	2	3	2	5	8	6	9
> 100B	2	2	3	1	1	2	2	3	2	2
5F2C: Number of Investment Advisers by Total AUM Category										
< $25m	1,438	989	1,124	1,137	1,035	1,139	1,077	1,071	1,349	1,305
$25 < 100m	2,381	2,875	3,020	3,036	3,068	3,492	3,489	3,720	4,259	4,228
$100m < 1b	2,297	2,480	2,474	2,747	2,993	3,812	3,904	4,096	3,780	4,108
$1 < 5b	705	708	727	828	915	1,149	1,173	1,235	1,096	1,176
$5 < 10b	190	203	199	206	211	237	284	327	301	318
$10 < 50b	231	237	221	250	285	334	367	409	346	363
$50 < 100b	35	37	39	46	51	65	77	90	65	81
≥ $100b	45	52	48	52	56	62	75	82	61	64
5F2D: Number of Investment Advisers by Discretionary Accounts Category										
0	1,811	1,423	1,476	1,527	1,438	1,578	1,551	1,548	1,596	1,635
1-14	3,418	2,920	3,038	3,187	3,209	4,350	4,073	2,452	2,364	2,372
15-50	939	1,000	991	1,023	1,025	1,099	1,156	1,276	1,269	1,239
51-100	741	800	815	830	837	898	945	989	993	1,033
101-500	1,841	2,019	2,091	2,212	2,372	2,609	2,809	3,131	3,264	3,443
> 500	383	842	917	1,050	1,171	1,334	1,463	1,634	1,771	1,920
5F2E: Number of Investment Advisers by Non-Discretionary Accounts Category										
0	4,493	4,346	4,532	4,814	4,955	6,321	6,243	6,472	6,494	6,711
1-14	5,798	5,701	5,909	6,264	6,508	8,001	8,035	1,896	1,972	2,092
15-50	545	591	630	682	663	703	746	827	865	900
51-100	303	345	359	361	361	398	431	469	484	511
101-500	590	666	671	708	745	820	853	963	1,007	989
> 500	86	278	283	287	337	368	380	403	435	439
5F2F: Number of Investment Advisers by Total Accounts Category										
0	1,140	593	662	716	631	704	643	617	645	727
1-14	2,823	2,074	2,199	2,339	2,366	3,433	3,136	2,411	2,324	2,319
15-50	991	1,068	1,081	1,104	1,095	1,170	1,231	1,319	1,318	1,323
51-100	823	915	906	923	942	983	1,011	1,080	1,086	1,110
101-500	2,211	2,410	2,479	2,590	2,738	3,032	3,255	3,582	3,715	3,851
> 500	474	1,114	1,187	1,346	1,473	1,672	1,812	2,021	2,169	2,312

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
Total Number of Advisers	7,322	7,581	7,852	8,302	8,614	10,290	10,446	11,030	11,257	11,643
5F: AUM for All Investment Advisers										
Discretionary AUM (Trillions)	$17.957	$19.743	$18.129	$21.131	$24.283	$28.649	$34.282	$38.668	$30.908	$35.173
Non-Discretionary AUM (Trillions)	$2.301	$2.354	$2.502	$2.277	$2.476	$2.747	$3.371	$3.628	$3.086	$3.391
Total AUM (Trillions)	$20.258	$22.097	$20.631	$23.408	$26.759	$31.396	$37.653	$42.296	$33.994	$38.564
5G: Number of Investment Advisers by Advisory Services										
5G1: Financial Planning	2,169	2,501	2,733	2,997	3,166	3,502	3,820	4,274	4,530	4,780
5G2: PM for Individuals/ Small Buss.	4,987	5,639	5,862	6,213	6,438	7,107	7,548	8,159	8,405	8,756
5G3: PM for Investment Companies	1,363	1,470	1,478	1,463	1,441	1,419	1,419	1,470	1,485	1,500
5G4: PM for Buss. or Institutional Clients	4,044	4,564	4,867	5,185	5,436	6,492	6,591	6,961	7,104	7,372
5G5: Pension Consulting	955	1,137	1,242	1,366	1,427	1,536	1,651	1,806	1,900	2,023
5G6: Selection of Other Advisers	1,320	1,597	1,917	2,179	2,340	2,692	2,953	3,241	3,430	3,616
5G7: Publications	463	526	583	652	666	696	725	734	725	759
5G8: Security Ratings or Pricing	32	34	39	42	44	45	50	38	45	52
5G9: Market Timing	200	233	245	225	205	181	174	168	158	154
5G10: Other	855	1,013	1,219	1,408	1,640	2,433	2,502	2,663	2,760	2,870
5H: Number of Investment Advisers by Number of Clients Provided Financial Planning Services										
0	1,497	1,788	1,949	2,104	2,175	2,583	2,667	2,822	2,951	3,126
1-10	484	541	575	637	686	815	874	1,023	1,152	1,213
11-25	340	407	421	466	464	483	549	603	604	612
26-50	330	394	409	444	481	533	577	598	622	625
51-100	355	384	420	461	470	513	552	590	601	610
101-250	360	418	457	474	510	530	553	626	641	676
251-500	167	194	206	213	218	222	256	264	269	290
> 500	113	124	118	130	125	141	151	157	159	158
5I: Number of Investment Advisers Participating in a Wrap Fee Program										
5I1: Sponsoring the Wrap Fee Program	310	352	369	388	399	435	455	516	568	632
5I2: PM for the Wrap Fee Program	700	823	866	900	937	1,017	1,068	1,170	1,212	1,291

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
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6: Number of Investment Advisers by Other Business Activities										
6A1: Broker-Dealer	588	642	650	637	613	611	628	644	623	611
6A2: Registered Rep. of a Broker-Dealer	778	912	921	963	905	919	922	946	955	895
6A3: Futures CM or Commodity PO/TA	290	338	379	391	383	497	436	408	383	378
6A4: Real Estate Broker, Dealer, or Agent	61	77	69	72	76	76	87	82	92	84
6A5: Insurance Broker or Agent	826	982	1,037	1,110	1,118	1,180	1,266	1,358	1,422	1,434
6A6: Bank	73	81	87	82	73	72	52	44	40	37
6A7: Other Financial Product Salesperson	151	166	184	206	197	227	233	250	262	263
6B1: Other Non-Advisory Business	916	1,073	1,121	1,219	1,269	1,483	1,559	1,660	1,721	1,774
6B2: Non-Advisory Primary Business	372	436	462	486	511	632	681	713	753	767
6B3: Adv. Clients Sold Non-Advisory Services	1,582	1,848	1,981	2,154	2,249	2,476	2,569	2,777	2,881	2,947
7: Number of Investment Advisers by Financial Industry Affiliations										
7A1: Broker-Dealer or Muni/Gov Broker/Dealer	2,371	2,631	2,640	2,629	2,573	2,729	2,633	2,681	2,688	2,630
7A2: Investment Co.	1,385	1,549	1,582	1,592	1,589	1,627	1,571	1,604	1,597	1,578
7A3: Other IA	2,338	2,683	2,862	2,925	2,962	3,457	3,397	3,459	3,470	3,491
7A4: Futures CM or Commodity PO/TA	711	856	930	911	898	1,033	961	957	903	851
7A5: Banking or Thrift Institution	957	1,099	1,181	1,178	1,154	1,193	1,156	1,205	1,184	1,137
7A6: Accountant or Accounting Firm	503	633	702	780	823	910	949	1,035	1,106	1,121
7A7: Lawyer or Law Firm	332	411	440	459	480	575	599	628	643	645
7A8: Insurance Company or Agency	1,379	1,635	1,744	1,737	1,767	1,811	1,817	1,909	1,980	2,025
7A9: Pension Constant	422	505	555	586	600	626	654	710	739	719
7A10: Real Estate Broker or Dealer	374	467	492	525	525	548	576	602	612	595
7A11: Sponsor or Syndicator of Limited Ptrshps	781	976	1,114	1,179	1,256	1,501	1,539	1,580	1,600	1,613
7B: Rule 203(b)(3)-1	2,129	2,543	2,749	2,887	1,980	4,497	4,326	4,378	4,302	4,320

	5/16 2001[10]	4/29 2002	4/8 2003	4/5 2004	4/20 2005	4/10 2006	4/8 2007	4/23 2008	4/10 2009	4/18 2010
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8: Number of Investment Advisers by Participation or Interest in *Client* Transactions										
8A1: Principal Trans.	581	647	666	675	697	827	829	880	868	888
8A2 RIA purchases recommended securities	4,751	5,397	5,662	6,013	6,322	7,554	7,770	8,417	8,740	9,138
8A3 Recommends securities with RIA interest	1,546	1,786	1,868	2,004	2,147	2,738	2,662	2,740	2,790	2,844
8B1: Agency Cross Trans.	647	698	703	683	663	690	651	630	636	616
8B2 Recommends securities where related person has sales interest	1,273	1,511	1,617	1,725	1,854	2,439	2,407	2,514	2,515	2,539
8B3 Recommends securities related person has other interest	745	913	955	1,037	1,077	1,252	1,248	1,295	1,329	1,331
8C1 Discretionary authority to determine securities trans	5,699	6,417	6,670	7,094	7,438	9,076	9,205	9,775	10,012	10,397
8C2 Discretion to determine amount of securities trans	5,687	6,404	6,662	7,081	7,434	9,077	9,202	9,771	10,006	10,391
8C3 Disc to determine BD	4,496	5,028	5,237	5,475	5,729	7,082	6,969	7,176	7,190	7,376
8C4 Discretion to determine commissions paid	4,097	4,566	4,727	4,931	5,140	6,392	6,218	6,307	6,245	6,355
8D Recommend BD to clients	4,289	4,895	5,160	5,551	5,906	6,848	7,197	7,816	8,113	8,407
8E: Soft Dollars	3,858	4,365	4,533	4,774	4,989	6,232	6,235	6,619	6,758	7,100
8F: Client Referrals	2,851	3,234	3,378	3,694	3,916	4,733	4,756	4,887	4,917	4,996
9A: Number of Investment Advisers by Custody of *Client* Assets by Adviser										
9A1: Cash/Bank Acc.	735	832	846	1,330	1,642	2,528	2,493	2,523	2,506	2,481
9A2: Securities	674	750	773	1,263	1,557	2,422	2,388	2,382	2,355	2,352
9B: Number of Investment Advisers by Custody of *Client* Assets by Related Person										
9B1: Cash/Bank Acc.	865	983	1,020	1,250	1,444	2,198	2,117	2,184	2,254	2,292
9B2: Securities	844	950	973	1,208	1,388	2,117	2,046	2,090	2,132	2,181
9C: Related Person is a Broker-Dealer	350	387	392	392	382	374	347	316	322	277
Number of Investment Advisers by 10 Year Disciplinary History										
No Disclosure	–	6,221	6,490	6,900	7,205	8,750	8,864	9,431	9,689	10,086

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