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November 4, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SEC Study on Enhancing Investment Adviser Examinations

Dear Secretary Murphy,

Fiduciary360 (fi360)¹ appreciates the opportunity to comment on the Commission's study of investment adviser oversight under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act").² The purpose of the study under Section 914 is focused on "the need for enhanced examination and enforcement resources for investment advisers." In effect, the results of the study are aimed at promoting the efficiency and effectiveness of investment adviser oversight and identifying the entity that is in the best position to provide the most effective oversight. In many ways, however, we believe that the review of examinations and oversight of investment advisers may be premature at this time given recent and impending regulatory changes.

As a result of the Dodd-Frank Act, many investment advisers will be switching to state registration in 2011,³ private advisers will be registering for the first time with the Commission,⁴ and the Division of Investment Management will play a greater role in compliance inspections

¹ Fi360 offers a full circle approach to investment fiduciary education, practice management, and support. Our mission is to promote a culture of fiduciary responsibility and improve the decision making processes of investment fiduciaries, including investment advisors, managers, and stewards. With legally substantiated Practices as our foundation, we offer training, tools, and resources in support of that mission. We manage the Accredited Investment Fiduciary® (AIF®) and Accredited Investment Fiduciary Analyst™ (AIFA®) designation programs. AIF designees receive training that provides a unique comprehensive overview of fiduciary standards of excellence, asset allocation, preparation of investment policy statements, manager search and due diligence, performance measurement, and other related subjects. AIFA designee training builds on that foundation and prepares students to provide Fiduciary Assessments to institutions. At present, there are over 4,200 active AIF and AIFA designees.

² Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, H.R. 4173 (2010).

³ Dodd-Frank Act Section 410.

⁴ Dodd-Frank Act Section 403.

and examinations.⁵ Under the Act, the Commission also has gained access to additional resources as the result of funding authorizations that would double the SEC's budget over the next five years and a \$100 million reserve fund.⁶

In addition to these forthcoming changes under the Dodd-Frank Act, in the past two years the Commission's Office of Compliance Inspections and Examinations has taken several steps to reshape its examination program, including strengthening procedures and internal controls to maximize resources, recruiting examiners with specialized skills, increasing examiner expertise through enhanced training, and focusing more sharply on a risk-based examination process.⁷ At the same time, the Commission's Division of Enforcement has made significant changes to its management structure, launched risk-based investigative initiatives, and hired employees with specialized market expertise.⁸

As a result of these and other regulatory changes, the effectiveness and efficiency of the Commission's examination and enforcement capabilities and resources have been and will continue to be significantly impacted. Thus, any results and recommendations the Commission submits to Congress must acknowledge not only how oversight has functioned over the past five years (as required by the Dodd-Frank Act), but also how the changing regulatory landscape has and will affect oversight. Moreover, the Commission's report to Congress must take into account the fact that additional findings on oversight will likely be identified in an independent consultant's organizational review of the Commission under Section 967 of the Act.

Given the changing regulatory landscape and additional findings yet to be submitted by the independent consultant, we believe that Commissioner Aguilar has provided the most practical analysis of who is in the best position to effectively oversee investment advisers, and that is the Commission.⁹ As recognized by Commissioner Aguilar, the Commission possesses the most significant experience applying and enforcing a principles-based regime for investment advisers and, therefore, should maintain its oversight authority and not hand the reins over to an entity that lacks comparable expertise. The Commission has developed a great deal of institutional knowledge and experience over the past seventy years that cannot be easily transferred or delegated. Arguments advanced for moving oversight away from the Commission have focused on the agency's limited resources. However, as discussed above, the Commission's access to resources will be positively impacted by changes made under the Dodd-Frank Act. Moreover,

⁵ Dodd-Frank Act Section 965.

⁶ Dodd-Frank Act Section 991.

⁷ See Examinations by the Securities and Exchange Commission Office of Compliance Inspections and Examinations, Feb. 2010, *available at* <http://www.sec.gov/about/offices/ocie/ocieoverview.pdf>.

⁸ See Robert Khuzami, Director, Division of Enforcement, and Carlo di Florio, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, Testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs, Sept. 22, 2010, *available at* <http://www.sec.gov/news/testimony/2010/ts092210rk-cd.htm>.

⁹ Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission, SEC's Oversight of the Adviser Industry Bolsters Investor Protection, Address at the Investment Advisers Association Annual Conference (May 7, 2009), *available at* <http://www.sec.gov/news/speech/2009/spch050709laa.htm>.

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the Commission has taken steps in recent years to maximize the utility of its resources in order to provide greater oversight and regulatory certainty. And at a time when investors, investment professionals, and markets are seeking such regulatory certainty, continuity of oversight appears to be a superior solution to creating a new regulatory body that would incur significant start-up costs.

For these reasons, we believe that the Commission is in the best position to regulate investment advisers in the most efficient and effective manner. Moreover, until more comprehensive data is available with regard to the impact of recent regulatory changes, we believe that any analysis or recommendations related to changing oversight of investment advisers would be premature. Thus, in the interest of investor protection and regulatory certainty, the Commission should remain the primary regulator of investment advisers.

We truly appreciate the opportunity to provide our views on these important issues. Please do not hesitate to contact us if you have any questions or would like additional information.

Sincerely,



Blaine F. Aikin
CEO



Kristina A. Fausti
Director of Legal and Regulatory Affairs