THE COMMITTEE FOR THE FIDUCIARY STANDARD

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FALLS CHURCH, VIRGINIA 22043

November 11, 2010

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

RE: Study Regarding Enhancing Investment Adviser Examinations

Dear Secretary Murphy:

This letter is submitted by the Committee for the Fiduciary Standard to comment on the Study Regarding Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Act. The Committee for the Fiduciary Standard comments on this issue from the perspective of being solely concerned with examinations and enforcement in terms of best ensuring that the fiduciary standard under the Advisers Act as recognized by the by the U. S. Supreme Court is upheld. The Committee formed to further this singular purpose.*

The Committee strongly supports the Commission retaining full and complete responsibility for examining registered investment advisers and opposes delegating any of this responsibility to an SRO. The inherent advantages of the Commission retaining this responsibility far outweigh any of the claimed advantages of an SRO.

The Commission is the only established agency or organization with seventy years experience regulating the principles-based fiduciary standard under the Advisers Act.

The Commission has developed a knowledge base, expertise and set of experiences over several decades in enforcing a principles-based regime that is uniquely its own and would be very difficult to transfer effectively to any other organization, regardless of its resources. The challenge of transferring a true understanding for the Advisers Act is daunting. Whether it is found in Justice Cardozo's articulation of the "punctilio of an honor the most sensitive," (1) or the Supreme Court's subsequent observation of factors shaping the Advisers Act, including, "a congressional recognition of the delicate fiduciary nature of an investment advisory relationship," (2) there is an established recognition that regulating fiduciary relationships founded on the underlying principles of loyalty, utmost good faith and due care is fundamentally different in its nature to regulating brokerage relationships that are focused on determinations of fair product pricing, disclosures and suitability.

Resources are not a consideration, either for policy or budgeting reasons; both an SRO and the Commission could be allowed to collect exam fees from advisors.

There is wide agreement that the Commission should be permitted to access additional resources to meet the regulatory demands. Many, including Commissioner Aguilar, have suggested this as a funding option. (3) Therefore, the Commission should stay the course with regard to requesting such access to funding from Congress.

*The Committee for the Fiduciary Standard formed in 2009 to advocate for the fiduciary standard under the Advisers Act of 1940 and as represented in the Committee's five core principles. There are over 800 investment professionals who are members of the Committee. For more information go to www.thefiduciarystandard.org.

The importance of restoring investor confidence in the markets is paramount. The Commission is a government agency that is accountable to Congress, and through it – American investors. With investor confidence historically low, restoring investor confidence is an additional basis for NOT outsourcing oversight of Wall Street to an SRO that is, partially, held accountable by Wall Street securities firms.

The securities industry and financial institutions continue to suffer from historically low levels of consumer trust. The latest "Financial Trust Index" report (October 21, 2010) shows continued dissatisfaction from consumers; only 14% say they "trust" the stock market. (3) This lack of trust focuses attention on the material difference between an independent, public agency held accountable for investor protection, as opposed to a private SRO that is, in part, accountable to securities firms. How is it explained to investors that putting an "industry association" in charge of making sure that Wall Street investment professionals follow the rules is, in fact, in investors' best interest?

Conclusion

The Commission should retain its role as the sole regulator of investment advisers. The Commission is the most experienced entity to regulate investment advisers under a principles-based standard; the issue of additional resources should not be factor in choosing the best regulator for investment advisers; investor trust will be best restored through a public agency accountable to Congress and investors.

On Tuesday, Chairman Schapiro noted in a speech (5) that the Commission was "refocusing on our core mission — our guiding principle — of putting investors first." A signal of this 'refocusing' would be, indeed, leveraging the Commission's decades of experience and enormous talent and retaining its sole responsibility for examining investment advisers.

Respectfully,

Knut A. Rostad

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Chairman
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1. 164 N. E. 545, 464 (N. Y. 128)
2. SEC v. Capital Gains research Bureau, Inc., 375 U. S. 180.
3. "SEC's Oversight of the Advisor Industry Bolters Investor Protection," May 7, 2009.
4. "A primary consequence of the 2008 financial crisis was a large drop in trust Americans had in financial institutions, and we're seeing a continued decline despite reform enacted to combat this sentiment," co-author Paola Sapienza, a professor of finance at the Kellogg School at Northwestern University explains. See at: http://www.financialtrustindex.org/resultswave8.htm
5. http://www.sec.gov/news/speech/2010/spch110910mls.htm