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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Ms. Murphy:

Wellington Management Company, LLP ("Wellington Management")[1] appreciates the opportunity to offer its comments as the Securities and Exchange Commission (the "Commission") studies the need for enhanced examination and enforcement resources for investment advisers. We strongly support a rigorous and effective examination program for investment advisers. At the same time, we believe that in order to be effective any enhanced examination and enforcement program should reflect the different investor protection and other considerations that apply to institutional and retail advisory customers in the marketplace. A program that reflects those differences is likely to deliver the desired benefit to the underlying consumers of investment advisory services without imposing unnecessary costs. In order to best achieve this goal, we believe that the Commission should retain exclusive examination authority over investment advisers that provide advice exclusively to institutional customers, including mutual funds and private investment funds whose advisers must register with the Commission.

Section 914 of the Act directs the Commission to consider the nature and frequency of adviser exams in the last five years, the extent to which an SRO would improve the frequency of exams, and current and potential approaches to examining dually registered or affiliated broker-dealers and investment advisers. The 914 study should be considered together with the study Congress mandated in Section 913 of the Act -- to examine a common regulatory standard for investment advisers and broker-dealers who are providing investment advice to retail customers. Sections 913 and 914 represent a public policy concern that there be common standards and effective examination oversight of investment advisers or broker-dealers who are providing

[1] Wellington Management is an SEC registered investment adviser that manages approximately $600 billion in assets on behalf of institutional clients worldwide.

investment advice directly to retail customers. We agree -- as suggested by the RAND study -- that distinctions between broker-dealers and investment advisers who are providing investment advice to retail customers have blurred and may no longer be a sensible basis for separate regulatory regimes. However, we believe that there are very different investor protection and other considerations that apply in the institutional adviser marketplace, and that an effective and efficient examination and enforcement program should account for those differences. We therefore ask the Commission to consider the following specific comments in its 914 study.

We believe the Commission should retain exclusive examination and enforcement authority over investment advisers to institutional customers, including mutual funds and private funds whose advisers must register with the Commission. If the Commission determines that a self regulatory organization ("SRO") for investment advisers is warranted, we believe that the SRO's mandate should apply only to the provision of investment advice directly to retail customers. This allocation of examination and enforcement oversight could address the differing investor protection and other considerations in the two markets, preserve the consistency and expertise that the Commission brings to the regulation of institutional investment advisers, and provide an overall increase in the resources devoted to the examination of investment advisers.

In our view, the Commission should base this distinction on the investment advisory activities of a firm -- merely being affiliated with a retail investment adviser or a broker-dealer should not be determinative. The definition of retail customer should focus, as suggested by Section 913 of the Act, on natural persons who are receiving investment advice for personal, family or household purposes. However, the Commission should consider recommending either an asset threshold (e.g., $25 million) above which a natural person would no longer be considered a retail customer, or an opt-out provision such as that available for certain knowledgable high net worth retail customers to be treated as professional customers in the United Kingdom.

A distinction between retail and institutional customers is warranted given the different investor protection and other considerations that apply to the different roles retail and institutional advisers play in the marketplace. For example, from an investor protection viewpoint, the needs of retail customers and institutional customers are quite different. Institutional customers control very large amounts of money and are often themselves fiduciaries to underlying stakeholders. They typically subject prospective advisers to careful screening in a competitive RFP process, frequently with the assistance of professional outside investment consultants or professional internal staff. They often monitor current advisers through independent analysis of investment holdings, individualized reporting and frequent meetings with advisory personnel. These commercial and legal elements

result in significant initial and ongoing oversight of investment advisers by their institutional customers, and play an important role in investor protection for these customers.

In contrast, retail customers often do not have either the sophistication or resources to carry out similar oversight. They are less knowledgeable about investment concepts, fees, conflicts of interest and other material elements of engaging an investment adviser. As a result, the investor protection examination and enforcement priorities for retail advisers may need to have more of a sales practice focus than is necessary for institutional advisers. This also may be an area where more prescriptive rules -- traditionally associated with an SRO approach -- may provide investor protection benefits. However, if the Commission were simply to apply that approach to the institutional market (for example through the addition of prescriptive sales practice rules -- either directly or through an additional SRO), we believe this would add cost to institutional advisers (and therefore to their customers) without any significant corresponding investor protection benefit.

On the other hand, institutional advisers play a more active role in the capital markets than retail advisers, buying and selling large amounts of securities on behalf of their mutual fund or other institutional customers. They are affiliated with or advise other important market participants (e.g., mutual funds) which the Commission regulates. Institutional advisers are significant allocators of capital to business, and are often large holders of publicly traded equity and debt securities. As a result, examination and enforcement priorities for institutional advisers require more of a focus on market regulation than is necessary for retail advisers. We believe that the Commission and its staff is best positioned to address the market integrity and other considerations that apply to the role of institutional advisers in the markets, by virtue of their expertise and their continuing responsibilities to regulate other related parts of the capital markets. Therefore, we believe that any additional examination or enforcement resources, including creation of an SRO, should be designed to allow the Commission to best focus its own resources on these additional important components of regulation, which are not present to the same degree with retail investment advisers.

We also believe the Commission should remain the exclusive examination authority for institutional advisers in order to maintain consistency with respect to other activities it will continue to regulate. For example, we assume the Commission will maintain examination and enforcement authority over mutual funds and private funds whose advisers must register with the Commission. Given the "externalized" structure of the great majority of mutual funds and private funds (that is, the majority of their activities are carried out through an affiliated investment adviser), we do not believe more efficient or effective regulation would result if the Commission delegated examination and enforcement authority of those advisers to

an SRO. As a concrete example of this point, we note the long history of Commission and staff administration of the Section 17 affiliated transaction provisions concerning mutual funds under the Investment Company Act, which involve oversight of both a mutual fund's Board and its investment adviser. We believe that allocating examination and enforcement of mutual fund advisers to an SRO, where the Commission continues to regulate the mutual fund, would result in either regulatory gaps or potentially conflicting and overlapping regulation. However, the allocation of authority over retail investment advisers to an SRO could provide the SEC with more resources to focus on this and similar areas, and would result in an overall increase in the examination and enforcement resources devoted to investment advisers.

We believe that considering a different allocation of examination and enforcement authority between retail and institutional investment advisers is consistent with similar steps the Commission's staff has taken to review its own organization in order to improve the effectiveness of its own examination and enforcement – for example, the creation of specialized units within the Division of Enforcement. We also note that a distinction between retail and institutional or professional customers of investment advisers – with different focuses and standards applied to the two customer types -- is a regulatory concept that is applied in many other developed capital markets (e.g., the United Kingdom and Hong Kong). In fact, many institutional investment advisers already operate under such programs with respect to their affiliates' non-US advisory activities.

Finally, any recommendation for additional examination or enforcement resources or an SRO should take account of the significant changes the Commission already will absorb as a result of the Act, including the shift of a significant number of investment advisers to state regulation, the reorganization of the Commission's own enforcement and examination programs, the addition of new potential resources to the Commission staff, and the time necessary to articulate the standard that may apply to retail investment advisers and broker-dealers as a result of the 913 study. The Commission should proceed cautiously and not fundamentally alter examination or enforcement programs or create an SRO without first considering the impact of these significant other changes -- all of which will have an important bearing on the very conduct that is the subject of any examination and enforcement program. At a minimum, the Commission should allow for significant time and industry involvement, especially if it determines to recommend the creation of an SRO.

We believe the 914 study is an important part of ensuring that the effective regulation of investment advice keeps pace with developments in the market. We encourage the Commission to use the opportunity to consider the most effective and efficient use of resources to address the differing investor protection and other

considerations in regulating retail and institutional investment advisers. If you have any questions or would like any additional information with respect to our comments please contact John Norberg or me at the number above.

Very truly yours,

Cynthia M. Clarke
General Counsel