

November 23, 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:

We are writing to respond briefly to statements in the November 2, 2010 comment letter filed by FINRA.

FINRA's letter states that "statements by the Investment Advisers (sic) Association ("IAA"), a trade association for the investment adviser industry, are troubling...In our view, preservation of the *status quo*, under which an investment adviser may be examined only once in a decade, would be a disservice to advisory clients."¹

The IAA does not support preserving the *status quo* with respect to SEC examinations of investment advisers. We have repeatedly called for increased funding of the SEC to enable it to conduct more frequent examinations of investment advisers. In testimony before the Senate and House last year, we voiced our strong support for additional resources for the Commission, including support for a self-funding mechanism.² We also expressed our

¹ Letter from Richard G. Ketchum, Chairman and Chief Exec. Off., FINRA, to Elizabeth Murphy, Secretary, Sec. and Exch. Comm'n. re: SEC Study on Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Nov. 2, 2010) at 2 n.3.

² 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, Exec. Dir. and Exec. Vice President, Investment Adviser Association); *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, Exec. Dir. and Exec. Vice President, Investment Adviser Association) (Tittsworth Senate Testimony). See also Letter from David G. Tittsworth, Executive Director, IAA, to Elizabeth Murphy, Secretary, U.S. Sec. and Exch. Comm'n. re: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers (Aug. 30, 2010) at 19 ("we also fully appreciate that the SEC has had insufficient resources to conduct examinations of the more than 11,000 investment advisers under its jurisdiction").

willingness to work with the SEC on measures to address its resource constraints, including user fees.³ Our comment letter on Section 914 cited by FINRA reiterates that 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.”⁴

While we agree that the investment adviser examination program should be bolstered, we disagree with FINRA that an SRO is the most effective and efficient way of achieving this result, for all the reasons we expressed in our letter. Other industry groups, such as the Managed Funds Association and the Investment Company Institute, as well as the North American Securities Administrators Association, have voiced these same views.⁵ As Commissioner Aguilar has noted, 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.... [an SRO] would end up being a more costly alternative than if you simply provided the SEC with adequate resources.”⁶

We also take issue with FINRA’s statement that “an adviser SRO should have some rulemaking authority,” particularly given FINRA’s acknowledgement that the “concerns regarding investment advisers primarily relate to the lack of examination resources.” The SRO model, with its emphasis on specific check-the-box rules, is not appropriate for the principles-based framework of adviser regulation. The Commission, which is directly accountable to the Congress and the public, has seventy years of experience dealing with the Investment Advisers Act and the diverse and dynamic population of investment advisers and thus is in the best position to set rules governing the advisory profession. Accordingly, we

³ Tittsworth Senate Testimony at 25.

⁴ See Letter from David G. Tittsworth, Exec. Dir., IAA, to Elizabeth Murphy, Secretary, Sec. and Exch. Comm’n, re: SEC Study on Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Oct. 19, 2010) at 2.

⁵ See e.g., 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) (expressing concern that an adviser SRO would not result in “any public policy benefit” and stating MFA “would support appropriate fees on investment advisers to help ensure that OCIE has the resources they need to conduct examinations of the investment adviser industry”); Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth Murphy, Secretary, Sec. and Exch. Comm’n re: Study on Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Oct. 26, 2010) (“The oversight of an industry so intertwined with the financial interests of ordinary Americans should be conducted by an independent government agency directly accountable to Congress and the public”); Letter from David Massey, President, North American Securities Administrators Association to Elizabeth Murphy, Secretary, Sec. and Exch. Comm’n re: Study on Enhancing Investment Adviser Examinations under Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Nov. 22, 2010) (“investment adviser regulation is a governmental function that should not be outsourced to a private, third-party organization that does not have expertise or experience with investment adviser regulation”).

⁶ Luis A. Aguilar, Comm’r, Sec. and Exch. Comm’n, *SEC’s Oversight of the Adviser Industry Bolsters Investor Protection* (May 7, 2009).

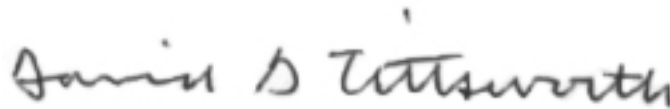
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strongly believe that all rulemaking authority for SEC-registered investment advisers should remain vested solely with the Commission.

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We appreciate the opportunity to supplement our views to the Commission on this important study. We would be pleased to provide any additional information the Commission or its staff may request. Please contact me 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

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