



Setting the global standard for investment professionals

3 December 2010

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

**Re: Study on Enhancing Investment Adviser Examinations**

Dear Ms. Murphy:

CFA Institute, (“CFA Institute”)<sup>1</sup> appreciates the opportunity to submit the following comments for a study the U.S. Securities and Exchange (“SEC” or the “Commission”) intends to undertake on “Enhancing Adviser Examinations” in accordance with section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, and on issues that affect the efficiency and integrity of global financial markets.

**Executive Summary**

CFA Institute believes that the best, most efficient manner of enhancing investment adviser examinations involves increased Congressional funding for the SEC that would allow it to meet its regulatory responsibilities for oversight of registered investment advisers (“RIAs”). This view is supported by the responses to a November survey from more than 1,300 CFA Institute members who practice asset management in the United States. Of these members, 57 percent said they favor having the SEC continue to oversee RIAs.

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<sup>1</sup> CFA Institute is a global, not-for-profit professional association of nearly 107,000 investment analysts, advisers, portfolio managers, and other investment professionals in 137 countries, of whom nearly 95,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.



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By comparison, just 25 percent of survey respondents favored handing those RIA oversight responsibilities over to the Financial Regulatory Authority (“FINRA”), and just 18 percent favored some other option. Consequently, we do not support the creation or use of an SRO to oversee the examination function. Among other things, we believe that delegation of this responsibility to a body outside of the SEC risks redundancy, confusion and a dilution of the examination-enforcement relationship.

### **Effectiveness of Examination and Enforcement Programs**

Section 914 of the Dodd-Frank Act directs the SEC to study the need for enhanced examination and enforcement resources for investment advisers. One area of particular interest is whether having an SRO to augment the SEC’s oversight of investment advisers would increase the *frequency* of exams. We strongly support efforts to improve the SEC’s investment adviser examination and enforcement capabilities. To this end, we also support the Commission’s recent commitment of additional staff and resources and Chairman Shapiro’s support and departmental restructuring to achieve these goals.

While we support resources to enable more frequent exams of investment advisers, we also caution against increasing the *frequency* of examinations (on which section 914 focuses) at the expense of impairing the *adequacy* or quality of those efforts. Rather, we believe examiners must understand both the investment advisory industry and the rules and regulations governing investment advisers, and then be able to apply that understanding in a manner that serves the interests of investors.

### **Suggestion of Creating an SRO to Assist in Oversight of Advisers**

We appreciate any concern that the SEC’s limited resources may affect its ability to adequately examine the advisers under its oversight. To this end, we support an increase in funding for the Commission that would enable it to conduct the oversight responsibilities entrusted to it through the Investment Advisers Act of 1940.

On the other hand, we think that the consideration of engaging an SRO to take over the Commission’s investment adviser examination program is misplaced. The effectiveness of the examination and enforcement program is dependent upon the expertise of those conducting the exams and coordination with their appropriate enforcement counterparts. We strongly believe that continued oversight responsibility should remain with the SEC, given its long history in overseeing this group of market participants under the Investment Advisers Act of 1940, and not delegated to an outside organization.



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Our members concur with this view. In a November 2010 survey<sup>2</sup> about who should regulate investment advisers, 57 percent of the 1,314 CFA Institute members who responded said the SEC should be responsible. By comparison, just 25 percent said FINRA, and 14 percent said a newly created SRO, should oversee the industry.

Finally, we do not believe the type of rules-based oversight provided by FINRA is appropriate for investment advisers. That SRO's regulatory structure was developed to work well with the broker-dealer sector where client relationships are based primarily on specific asset purchases and sales. Investment advisers' services, on the other hand, are based on long-term investment programs typically set out in investment policy statements agreed to between advisers and their clients. These programs evolve over time as the situations of individual clients change and, therefore, are better served by a principles-based regulatory structure.

We are concerned, therefore, that adviser examinations under the purview of FINRA could easily devolve into an approach that is substantially inappropriate for the investment adviser community and its fiduciary duty mandates. Consequently, if Congress were to decide to empower the SEC with authority to use an SRO in its examination of registered investment advisers, we would oppose assigning the role to FINRA.

### **SEC Resources to Adequately Perform its Regulatory Duties**

We recognize and appreciate the paucity of resources under which the SEC has operated over a number of years and the strains this has placed on its ability to mount an effective inspection and enforcement program in this area. As an alternative to outsourcing investment adviser oversight to an SRO, we support Congressional allocation of adequate resources to enable the SEC to secure both the personnel and technological resources to oversee its range and number of responsibilities.

### **Conclusion**

We encourage the SEC to emphasize in its report to Congress its specialized expertise in overseeing investment advisers that should not be diluted by delegating examination authority to an outside body. Instead, we will continue to support calls for the allocation of needed resources that will further the SEC's efforts to revamp its examination and enforcement programs relating to registered advisers. Should you have any questions about our positions, please do not hesitate

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<sup>2</sup> The online survey was conducted between 19 November and 26 November, and was sent to 30,341 members in the United States who are involved in the asset management business. The margin of error is  $\pm 2.6$  percent. Members also were asked if they thought the SEC was doing an adequate job regulating those who provide investment advice to investors; 65 percent said they did not think it was doing an adequate job, versus 35 percent who said yes.



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to contact me at [john.rogers@cfainstitute.org](mailto:john.rogers@cfainstitute.org), or 434.951.5300; or Linda L. Rittenhouse at [linda.rittenhouse@cfainstitute.org](mailto:linda.rittenhouse@cfainstitute.org) or 434.951.5333.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Rogers". The signature is fluid and cursive, with a long horizontal stroke at the end.

A handwritten signature in black ink, appearing to read "Linda L. Rittenhouse". The signature is more formal and legible than the one to its left.

/s/ John D. Rogers

/s/ Linda L. Rittenhouse

John D. Rogers, CFA  
President and Chief  
Executive Officer  
CFA Institute

Linda L. Rittenhouse  
Director, Capital Markets Policy  
CFA Institute