

THE WILLARD  
1455 PENNSYLVANIA AVENUE, NW, SUITE 1200  
WASHINGTON, DC 20004

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TEL 202-347-2230  
FAX 202-393-3310 WWW.DAVIS-HARMAN.COM

August 2, 2018

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Commission's Request for Comment on Enhancing Investment Adviser Regulation,  
File No. S7-09-18

Dear Mr. Fields:

On behalf of a large group of firm clients, including brokerage firms, insurance companies, asset managers, mutual funds, and banks, we are writing today with respect to the Commission's request for comments on certain possible areas for the harmonization of broker-dealer and investment adviser regulations. The Commission specifically requested comments on matters concerning the prospect of new federal licensing, continuing education, account statement, and financial responsibility requirements for investment advisers and/or their representatives.

We applaud the Commission's ongoing efforts to enhance investor protections for retail investors, and we encourage the Commission to continue to consider a variety of ways in which such additional protections could be achieved. As the Commission described in its comment request, there are some areas in which the current broker-dealer framework provides investor protections that do not have direct counterparts in the investment adviser context. Harmonizing the regulatory schemes in these areas, without imposing redundant requirements, is an important way for the Commission to increase retail investor protection.

We would support efforts by the Commission to move forward with proposing specific enhancements to the regulation of investment advisers in the areas contemplated by the comment request. However, while we would support the Commission instituting new federal investor protections in those areas, we would nevertheless urge the Commission to focus its efforts on filling the gaps in protection that exist today. That would mean, for example, not applying duplicative requirements on dual registrants who already meet such requirements under the broker-dealer regulatory regime.

We turn now to the specific areas with respect to which the Commission requested comment.

## **I. Continuing Education**

We believe that representatives of both broker-dealers and investment advisers who work with retail investors should be subject to federal continuing education requirements. Continuing education is an important element in helping to ensure that retail investors are working with knowledgeable and competent professionals. As noted in the Commission's comment request, personnel who are registered with a broker-dealer are already subject to continuing education requirements under FINRA rules. Investment adviser representatives, however, are generally not subject to continuing education requirements unless they are dually registered (and thus are subject to FINRA's requirements).

We would support efforts by the Commission to develop a single national continuing education standard that representatives of SEC-registered investment advisers would be subject to. A national standard would provide for a more consistent investor experience for individuals who work with investment adviser representatives and could help avoid the patchwork of state-imposed continuing education requirements that could materialize if states move forward in this regard instead. In this context, the Commission may want to coordinate its efforts with the North American Securities Administrators Association, which is studying the possibility of adopting a model rule for states.

In order to avoid duplicative requirements and unnecessary burdens and expense with respect to a national standard, we would urge the Commission to craft such standard in a way that dually registered representatives would be deemed to have satisfied the requirement by fulfilling the FINRA continuing education requirements that apply to broker-dealers. There is no reason to have overlapping or redundant requirements for dual registrants. In other words, while we support a broad federal standard, that standard should be targeted at those investment adviser representatives who are not currently subject to a nationally standardized continuing education requirement.

We also recommend that any new continuing education requirements be limited to representatives who work to any material degree with retail customers and exclude those persons whose functions are solely clerical or ministerial.

## **II. Federal Licensing**

In connection with a national continuing education requirement, all investment adviser representatives (other than those whose functions are solely clerical or ministerial) would need to be registered with the Commission.<sup>1</sup>

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<sup>1</sup> Those who do not work to any material degree with retail customers would be required to register (because their clientele could change over time), but they would be exempt from the continuing education requirement, as noted.

The further question is: what, if any, additional requirements should be applied to such individuals by the Commission? The answer to this question requires a careful balancing of two competing considerations. On the one hand, such individuals may in many cases be subject to state licensing requirements that are robust and effective. There is no reason to impose redundant costs on the system with respect to the licensing of such individuals. On the other hand, there are certain gaps in the state licensing regimes that should be addressed to strengthen the system and protect investors.

We support a federal licensing system that balances these two considerations. That could be done by establishing a national licensing system that would take into account other effective investor protection regimes, such as (1) licensing requirements at the state level, (2) other indicia of qualifications, such as holding certain professional designations, and (3) oversight through robust internal compliance supervisory systems.

### **III. Provision of Account Statements**

We support consistent transparency in the fees and expenses that retail investors pay in exchange for the services they receive from investment advisers. The provision of periodic reports or statements of the fees and expenses paid by a specific retail investor is important in helping that individual understand the costs of the services he or she is receiving.

As described in the Commission's comment request, many investment advisers already provide statements to retail investors, and the Commission's custody rule requires advisers with custody of a client's assets to have a reasonable basis for believing that the qualified custodian sends an account statement to each client for which it maintains funds or securities on at least a quarterly basis. As such, we believe that the circumstances under which a retail investor would not receive a periodic account statement are fairly limited.

But to improve transparency and the experience of retail investors who do not receive periodic statements or notifications of the specific fees they are being charged by an investment adviser, we would support a federal requirement that is targeted at this narrow situation. In other words, such a requirement should only apply to the extent that a retail investor is not already required to be receiving from the investment adviser, custodian, or a third party an individualized statement on at least a quarterly basis that includes the fees and expenses that he or she is paying for the adviser's services. Alternatively, if a new federal requirement were to apply more broadly, then we would urge the Commission to specify that the range of methods currently being used to provide this information to retail investors would be deemed to satisfy the requirements of the rule, unless such method is clearly insufficient.

We also urge the Commission to adopt a rule allowing all required account statements – including those currently required with respect to broker-dealers and others – to be delivered through its recently announced “notice and access” approach. Under that approach, all required account statements could be provided by making them available on a secure website, free of charge, as long as the investors are sent a paper notice at least annually regarding (1) how to access the website, and (2) how they may elect to receive their account statements on paper free of charge.

#### **IV. Financial Responsibility**

We support the application of certain financial responsibility requirements for SEC-registered investment advisers that are similar to those that apply to broker-dealers. Ensuring that financial protections are in place in the event that an investment adviser, for example, experiences financial difficulties or commits fraud is important for the confidence of retail investors and for purposes of compensating clients for their loss in such situations.

Accordingly, we support the Commission's further consideration of such requirements with respect to investment adviser firms who work to any material degree with retail clients. The requirements should include minimum net capital requirements and fidelity bonds that are the same as or comparable to those applicable to broker-dealers.

To avoid the duplication of requirements for dually registered firms, however, we would urge the Commission to clarify that any new financial responsibility requirements that apply to investment advisers would be deemed satisfied if a dual registrant is in compliance with the same or similar financial responsibility requirements that apply to broker-dealers, but taking into account the firm's advisory accounts as appropriate.

In addition, we recommend that the Commission consider other exclusions that may be appropriate. An example would be an exclusion for adviser firms that are part of a large financial services organization which is financially responsible for the actions of the adviser firm and which satisfies the applicable requirements. It may also be appropriate, for example, that investment advisers which do not have custody of client accounts be required to obtain a fidelity bond but be subject to a reduced net capital requirement.

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We thank you for your consideration of our comments.

Sincerely,



Kent A. Mason