

July 11, 2011

VIA ELECTRONIC MAIL

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

**Re: Investment Adviser Performance Compensation; SEC Release IA-3198; File Number S7-17-11**

Dear Ms. Murphy:

The Investment Adviser Association<sup>1</sup> appreciates the opportunity to comment on the Commission's proposal to amend the qualified client standard in rule 205-3 under the Investment Advisers Act of 1940.<sup>2</sup>

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amendments to section 205(e) of the Advisers Act, the Proposal would amend the assets-under-management and net worth thresholds to reflect the effects of inflation on the current thresholds, which were last adjusted in 1998. The Commission calculated the revised thresholds using the Personal Consumption Expenditures Chain-Type Price Index ("PCE Index"). In addition, the Proposal, in accordance with Dodd-Frank amendments to section 205(e), would provide for five-year adjustments to the thresholds using the same PCE Index. The Commission also noted that it anticipates delegating to its staff the authority to issue the five-year inflation adjustments. We support these proposed changes.

We also support the proposed transition rule, which would grandfather existing performance fee arrangements that were permissible at the time the contract was entered into. Such a rule is necessary to avoid interference with current client relationships, and minimize disruption to the contracts governing these relationships.

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<sup>1</sup> The Investment Adviser Association is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of more than 500 firms that collectively manage in excess of \$10 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> Investment Adviser Performance Compensation, SEC Rel. IA-3198 (May 10, 2011) (the "Proposal"), available at <http://www.sec.gov/rules/proposed/2011/ia-3198.pdf>.

In addition, we request that the Commission provide transition relief in the context of its definition of “investment adviser representative” under rule 203A-3 under the Advisers Act.<sup>3</sup> Rule 203A-3 provides that the term “investment adviser representative” of an investment adviser means a supervised person of the investment adviser (i) who has more than five clients who are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section); and (ii) more than ten percent of whose clients are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section). For purposes of this section, “excepted person” means a natural person who is a qualified client as described in rule 205-3(d)(1). Therefore, the adjustment of the thresholds in rule 205-3 will also affect the classification of investment adviser representatives under rule 203A-3. We submit that the Commission should provide similar transition relief under rule 203A-3 that would grandfather existing clients who currently qualify as “excepted persons.” In the alternative, we request that the Commission delay the effective date of the application of the new thresholds in the context of rule 203A-3 to allow investment advisers to determine whether their clients continue to qualify as “excepted persons,” and, if necessary, to prepare for and pass state qualification requirements.<sup>4</sup>

We appreciate the Commission’s consideration of our comments. Please feel free to contact me if we may provide additional information concerning these or other issues.

Sincerely,

-s- Kathy D. Ireland  
Kathy D. Ireland  
Associate General Counsel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner

Eileen Rominger, Director, Division of Investment Management  
Robert Plaze, Deputy Director, Division of Investment Management  
C. Hunter Jones, Assistant Director, Division of Investment Management

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<sup>3</sup> This term is used primarily in the context of state licensing of certain personnel of federally registered investment advisers, and is also embedded in Form ADV, Part 1 (see, e.g., Glossary (Investment Adviser Representative and High Net Worth Individual), Item 5).

<sup>4</sup> We note that the Commission included a similar delay in 1998, when the thresholds were last amended. Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Offices and Places of Business in Colorado or Iowa, SEC Rel. IA-1733 (July 20, 1998), available at <http://www.sec.gov/rules/final/ia-1733.htm>.