

**Bulldog Investors,** [REDACTED]  
[REDACTED]

May 24, 2011

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

Re: File No. S7-17-11 -- Proposed Rule: Investment Adviser Performance  
Compensation

Dear Ms. Murphy:

The Commission should be applauded for acting to bar the average investor from using performance-based investment advisors.

Some critics may nitpick and say that this is patronizing nanny-style regulation and that it smacks of class discrimination because it prevents average investors from hiring investment advisors that get paid for outperformance. They should get over it. Whether it is doctors or lawyers, or, as Eliot Spitzer knows, even hookers – the rich and famous will always be able to gain access to the best service providers. Why should it be any different for investment advisors?

The Constitution does not guarantee equal access to the best money managers. Until an investor has achieved a high level of wealth, why should he be able to make his own investment decisions? If someone is envious of the freedom of the wealthy to hire the best money managers, nothing is stopping that person from becoming wealthy himself as long as he does not do so by hiring a performance-based investment advisor.

It is not as if small investors have no options. There are many investment advisors that will be happy to be paid a fee whether or not they perform well. Small investors can also buy mutual funds and incur a management fee that has no relation to how the fund performs. Call me elitist but if the SEC allows every Tom, Dick and Harry to have access to the best investment managers, what is the point of accumulating wealth? (Thankfully, since I received a sizeable bequest, my own ability to utilize investment advisors that are compensated based upon performance will not be adversely impacted by the new rule.)

I also note that the Commission concluded that the proposed rule has only benefits and no costs. So, unlike other regulations, this one has no tradeoffs at all. And, rather than

address the contention that the new rule is unfair to small investors the Commission cleverly passed the buck back to Congress.

As a result [of the proposed higher wealth threshold], an investment adviser could be prohibited from charging performance fees to new clients to whom it could have charged performance fees if the advisory contract had been entered into before the adjustment of the dollar amount thresholds. This effect may result in an investment adviser declining to provide services to potential clients. However, this cost is a consequence of the Dodd-Frank Act, and therefore we do not attribute this cost to this rulemaking. (Footnote omitted)

I just wonder how the Commission will respond to the suggestion that it should use its broad exemptive authority to allow non-wealthy investors to opt out of the new rule. I would never suggest such a thing but the Commission should think about how to respond just in case someone else does.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Phillip Goldstein", with a long, sweeping horizontal stroke extending to the right.

Phillip Goldstein  
Principal