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NASAA

July 25, 2012

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services;
Subcommittee on Capital Markets and GSEs
2148 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Waters:

On behalf of the North American Securities Administrators Association, I am writing to applaud you for introducing legislation that will authorize the Securities and Exchange Commission (SEC) to charge "user fees" on federally registered investment advisers. Your legislation will greatly benefit retail investors by significantly increasing the resources available to the SEC to oversee large advisers. It will allow the SEC to improve the frequency and overall effectiveness of investment adviser examinations at no additional expense to taxpayers. More importantly, the legislation will not impose additional costs and added regulation on the thousands of small and mid-size investment adviser firms that are registered with and regulated by the states.

As you know, Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) directed the SEC to analyze the need for enhanced examination and enforcement resources for federally registered investment advisers. The SEC's § 914 Study (914 Study), released in January 2011, concluded that due to capacity and funding challenges the SEC is prevented from conducting examinations of federally registered investment advisers with adequate frequency. In its study, the SEC examined and recommended three options to obtain the desired examination frequency: (1) imposing user fees on federally registered investment advisers to fund increased SEC examinations; (2) authorizing one or more self-regulatory organizations (SROs), which may include the Financial Industry Regulatory Authority (FINRA), to examine federally registered advisers, subject to SEC oversight; and (3) authorizing FINRA to examine dual registrants.

NASAA shares your conviction that authorizing the SEC to charge user fees to increase the frequency of its examinations is the most sensible and efficient way to improve investment adviser oversight at the federal level. There are significantly better approaches, as this legislation demonstrates, that Congress could implement to enhance investor protection without outsourcing oversight and responsibility to an industry-funded SRO.

Investment Adviser Regulation is a Government Responsibility

NASAA has consistently taken the position that investment adviser regulation is, and should remain, a governmental responsibility where oversight is both transparent and accountable. Unlike a private, third-party organization that does not have the expertise or experience with investment adviser regulation and that is accountable to a board of directors and not the investing public, government regulators bring to the table decades of experience unmatched by any entity in existence.

Moreover, when it comes to the important subject of investment adviser regulation, there is no regime superior to governmental collaboration between the states and the SEC. John Morgan, Texas' Securities Commissioner, recently testified on behalf of NASAA to the Financial Services Committee that the regulation of investment advisers should continue to be the responsibility of state and federal governments and that these regulators must be given sufficient resources to carry out this mission. Therefore, as a matter of policy and principle, NASAA believes that the most appropriate way to improve the oversight of federally registered investment advisers is to provide the SEC with the resources needed to do the job, either through increased appropriations, or by authorizing the SEC's Office of Compliance Inspections and Examinations to collect user fees from the investment advisers it examines.

Imposing User Fees is More Efficient and Cost-Effective

NASAA contends that authorizing the SEC to fund enhanced oversight of federally registered investment advisers through the imposition of user fees is more efficient and cost-effective than establishing an SRO for investment advisers. It allows the SEC to build on the expertise and infrastructure already in place. Indeed, a recent economic analysis performed by the Boston Consulting Group (BCG) found that establishing an SRO to examine investment advisers would likely cost twice as much as funding an enhanced SEC examination program. The BCG also found that investment advisers would likely pay twice as much in membership fees to an SRO as they would pay in user fees to the SEC.

Further, imposing user fees would be a less expensive option because it eliminates the need for the SEC to spend significant resources in overseeing an SRO. The 914 Study acknowledged the high costs of coordination between the SEC staff and an SRO "which might include, for example, not only direct costs like additional management costs required to oversee the SRO's effectiveness, but also other costs that are even more difficult to quantify." In the 914 Study, the SEC staff went on to state as follows:

> There is no certainty that the level of resources available to the Commission over time would be adequate to enable staff to effectively oversee the activities of the SRO. Therefore, a user fee approach, which would contribute directly to the Commission's investment adviser examination program, would avoid the risk of underfunded oversight of an SRO.

According to the BCG analysis, the start-up costs alone of an SRO could fund an enhanced SEC examination program for an entire year.

State and Federal Responsibilities Should be Preserved

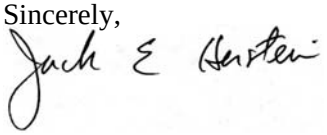
Since the passage of the National Securities Markets Improvement Act in 1996 and the Dodd-Frank Act, the division of federal and state regulatory responsibility over investment advisers has been clearly delineated according to the amount of investors' assets under management. From the perspective of states securities regulators, this division has worked very well.

Further, for over 70 years, the SEC and state securities regulators have had concurrent regulatory authority over the investment adviser industry. The SEC has an experienced examination staff with industry expertise and established enforcement mechanisms. It understands the myriad of legal and regulatory issues, including rules that the SEC itself has promulgated, impacting investment advisers. For example, the SEC has effectively employed a principles-based approach to regulating investment advisers under the Investment Advisers Act—as contrasted to the rules-based approach that is applied to monitoring broker-dealers.

Similarly, state governments have decades of experience regulating investment advisers. States' track record in examining smaller investment advisers with less than $25 million in assets under management is exemplary, and Congress recognized this when it passed the Dodd-Frank Act, increasing state oversight of investment advisers with less than $25 million in assets under management to under $100 million. State regulators benefit from proximity to and familiarity with small and mid-sized investment advisers. Section 914 of the Dodd-Frank Act mandated that the SEC review and analyze its challenges in examining federally registered advisers. The 914 Study did not consider, or make recommendations regarding, state regulated investment advisers. Your legislation recognizes this important distinction and seeks to address the problem of SEC oversight by covering only federally registered investment advisers in the scope of the bill.

In conclusion, for the reasons summarized above, we applaud you for introducing "user fee" legislation. We believe the legislation is an important, and vital step toward addressing the problems identified in the 914 Study in the oversight of federally registered investment advisers. This approach is more cost-effective, and ensures greater accountability and transparency, than outsourcing regulation to an industry-funded SRO. Moreover, state securities regulators have been effectively overseeing and regulating small and mid-sized investment advisers, and as government regulators, feel that this legislation will serve to enhance important, and necessary, investor protections. We look forward to supporting this legislation in the upcoming months.

Sincerely,



Jack E. Herstein
NASAA President