



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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April 19, 2013

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
Washington, DC 20515

The Honorable John Delaney
1632 Longworth House Office Building
Washington, DC 20515

Re: H.R. 1627, the Investment Adviser Examination Improvement Act of 2013

Dear Ranking Member Waters and Congressman Delaney:

On behalf of the North American Securities Administrators Association (NASAA),¹ I am writing to applaud you for introducing legislation that will authorize the Securities and Exchange Commission (“SEC” or “the Commission”) 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. Additionally, 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 are aware, 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.² In its study, the SEC examined and recommended three options to obtain the desired examination frequency: (1) impose user fees on federally registered investment advisers to fund increased SEC examinations; (2) authorize 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) authorize FINRA to examine dual registrants.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc. (NASAA) was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² Staff of the Division of Investment Management of the U.S. Securities and Exchange Commission, Study on Enhancing Investment Adviser Examinations (Jan. 19, 2011), accessible at <http://www.sec.gov/news/studies/2011/914studyfinal.pdf>.

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NASAA shares your conviction that authorizing the SEC to charge user fees – the first option referenced above – to increase the frequency of its examinations is the most sensible and efficient way to improve investment adviser oversight at the federal level.

Investment Adviser Regulation is a Government Responsibility

NASAA has consistently taken the position that investment adviser regulation is, and should remain, a governmental responsibility.

Investment adviser oversight should be transparent and accountable, and, as a practical matter, these goals are difficult or even impossible to realize within the framework of the SRO model. Moreover, government regulators bring to the table decades of experience unmatched by any entity in existence. Simply put: when it comes to investment adviser regulation, there is no regime superior to governmental collaboration between the states and the SEC, provided that regulators are given sufficient resources to carry out their mission. As a matter of policy and principle, therefore, NASAA agrees 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 (OCIE) to collect user fees from the investment advisers it examines.

User Fees are the Most Efficient and Cost-Effective Policy Alternative

Authorizing the SEC to fund enhanced oversight of federally registered investment advisers through the imposition of user fees is significantly more efficient and cost-effective than alternatives, such as establishing an SRO for investment advisers. Indeed, a 2011 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.³ The same BCG study 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.

Imposing user fees on advisers would be a less expensive option than alternative proposals because it would not require the SEC to spend significant resources in overseeing an SRO. Rather than create a whole new layer of regulation for advisers, your bill instead enables the SEC to build on the expertise and infrastructure it has in place; expertise and infrastructure accumulated over decades of successfully supervising investment advisers. 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.

³ The Boston Consulting Group, Inc., *Investment Adviser Oversight: Economic Analysis Options*, (December, 2011), accessible at <https://www.fpanet.org/docs/assets/42D88D3C-CCA5-CF42-0867AB1B1B620112/BCGPressReleaseStudyandSurveyonIAOversight.pdf>

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State and Federal Responsibilities Should be Preserved

Since the passage of the National Securities Markets Improvement Act in 1996 and the Dodd-Frank Act in 2010, 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.

In recent years, constraints on the resources of the SEC have caused significant deterioration in the level of oversight provided to federally registered investment advisers, resulting in an urgent problem that Congress must address. However, since the catalyst for the deterioration has been a lack examination resources, the remedy should be to provide additional resources for OCIE examinations, and to do so in a manner that will permit the Commission to maintain OCIE's examination resources at levels which correspond to its examination responsibilities. This is precisely what your bill will do.

In conclusion, for the reasons summarized above, NASAA applauds you for introducing the Investment Adviser Examination Improvement Act in the 113th Congress, and we look forward to working with you to provide for the legislation's timely enactment.

Sincerely,

A. Heath Abshure
NASAA President
Arkansas Securities Commissioner

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