



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.



December 4, 2013

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

Dear Representative:

We write to urge you to co-sponsor H.R. 1627, the Investment Adviser Examination Improvement Act of 2013. This important legislation will authorize the Securities and Exchange Commission (SEC) to collect an annual “user fee” from registered investment advisers to increase the frequency of investment adviser examinations and thereby better protect American investors.

Investors Deserve Better Protection

The SEC has responsibility for examining about 11,000 federally-registered investment advisers that manage approximately \$48 trillion in assets. Investors trust investment advisers to help them with, among other things, planning for retirement, developing household budgets, and saving for college education. The SEC, however, faces significant resource challenges in maintaining a robust examination program, as evidenced by the low examination rate of 8% last year and the projected 10% rate for the current year. Using recent examination rates as a barometer, the typical registered investment adviser can expect to be examined only once every 12-13 years. Moreover, approximately 40% of investment advisers, or two out of every five, have never been examined. Your constituents deserve much better!

The need to increase the frequency of investment adviser examinations has been a consistent SEC theme for several years. For example, former SEC chairman Mary Shapiro and current chair Mary Jo White have both expressed to Congress the need to improve oversight through increased examinations. Their pleas follow in the wake of the SEC staff study conducted pursuant to Section 914 of the Dodd-Frank Act (Section 914 Study) that directed SEC staff to analyze the SEC’s examination program and to make recommendations to Congress on ways to improve it.¹ As a result, SEC staff recommended two viable alternatives, namely establishing a self-regulatory organization (SRO) or collecting user fees from industry to pay for examinations.

A User Fee is the Right Policy Solution

A broad range of organizations, including AARP, Consumer Federation of America, CFP Board, Financial Planning Association®, Investment Adviser Association, National Association

¹ See, Study on Enhancing Investment Adviser Examinations (Jan. 19, 2011) at <http://www.sec.gov/news/studies/2011/914studyfinal.pdf>.

of Personal Financial Advisors, and NASAA believe that a user fee is the best option to increase investor protection because it is an efficient, economical, and common sense solution to the SEC's chronic problem of insufficient examination resources. Importantly, a user fee provides a funding source that impacts neither taxpayers nor the federal treasury.

Quantitative analysis supports the position that a user fee is the most effective and efficient way to pay for improved investment adviser oversight. The Boston Consulting Group, Inc. conducted a study (BCG Study)² that determined that a user fee is the least expensive of the options set forth in the Section 914 Study, in part, because it would not require the SEC to allocate additional resources to oversee an SRO. Further, the BCG Study found that an SRO would cost at least twice as much as funding an enhanced SEC examination program paid for through user fees.

The BCG Study found that a user fee enjoys broad industry support. The survey found that:

- approximately 81% of investment advisers said they preferred the SEC over FINRA oversight; and
- the preference for SEC oversight remained strong even if it would cost investment advisers more than FINRA oversight.³

Furthermore, investors are now speaking out on the need to increase the frequency of investment adviser examinations. In November, the SEC's Investor Advisory Committee unanimously approved (with one recusal) a recommendation that the SEC request user fee legislation from Congress.⁴ The recommendation noted that the current level of examination "is simply inadequate to detect or credibly deter fraud" and that the SEC cannot, as Chair Mary Jo White has stated, "enforce compliance with the securities laws in a way that investors expect and deserve."⁵ The recommendation points out that the concept underpinning user fee legislation is neither novel nor unprecedented. The House of Representatives has twice before, in 1992 and in 1993, approved similar legislation.⁶ We urge you to do so again.

The number of registered investment advisers has increased substantially over the past twenty years, but the SEC's resources have not kept pace with its expanded responsibilities. Improving investment adviser examinations is consistent with our efforts to ensure that

² See, The Boston Consulting Group, Inc., *Investment Adviser Survey of Investment Adviser Preferences*, (Dec. 15, 2011), accessible at http://www.cfp.net/docs/public-policy/bcg_investment_adviser_oversight_adviser_preferences.pdf?sfvrsn=2.

³ See, The Boston Consulting Group, Inc., *Investment Adviser Survey of Investment Adviser Preferences*, (Dec. 15, 2011), accessible at http://www.cfp.net/docs/public-policy/bcg_investment_adviser_oversight_adviser_preferences.pdf?sfvrsn=2.

⁴ See, Recommendation of Investor as Purchaser Subcommittee of the Investor Advisory Committee, <http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-examinations-recommendation-2013.pdf>.

⁵ See, Mary Jo White Testimony Before the House Subcommittee on Financial Services and General Government, Committee on Appropriations, May 16, 2013 at (<http://www.sec.gov/News/Testimony/Detail/Testimony/1365171516050>) and Testimony Before the Senate Subcommittee on Financial Services and General Government, Committee on Appropriations on June 25, 2013 at (<http://www.sec.gov/News/Testimony/Detail/Testimony/1365171606059>).

⁶ H.R. 5726, the Investment Adviser Regulatory Enhancement and Disclosure Act of 1992 and H.R. 578, the Investment Adviser Regulatory Enhancement and Disclosure Act of 1993.

investment advice is provided in a manner that keeps investors' interests paramount through accountability and transparency.

H.R. 1627 is a Narrowly Targeted Solution

H.R. 1627 offers a narrowly targeted solution to the problem of inadequate investment adviser oversight. The bill contains a number of safeguards that ensure that the fees will be collected and deployed in a manner consistent with Congressional intent. The bill:

- mandates that any fees collected be dedicated solely to an increased level of adviser examinations by the SEC;
- requires the SEC to develop its fee formula through a public notice and comment rulemaking;
- requires the SEC to consider, among other things, factors such as the size of an adviser, the adviser's assets under management, and the adviser's risk profile in determining a fee; and
- requires the Comptroller General to conduct a biennial audit of the SEC's use of fees.

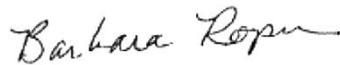
These safeguards, coupled with the organizational improvements the SEC is adopting, will substantially augment the SEC's ability to conduct frequent and effective examinations and, consequently, to protect investors.

Again, it is imperative that the SEC be able to properly oversee the activities of registered investment advisers. We are deeply concerned that the SEC's current inability to examine investment advisers more frequently increases opportunities for investor fraud and abuse. This bill, sponsored by Rep. Maxine Waters and Rep. John Delaney, is a crucial step to providing the SEC with much-needed financial resources.

We urge you to become a co-sponsor of H.R. 1627, the Investment Adviser Examination Improvement Act of 2013.

Respectfully yours,

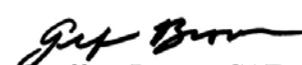

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