

June 5, 2012

Rep. Spencer Bachus  
Chairman  
Financial Services Committee  
U.S. House of Representatives  
2246 Rayburn House Office Bldg.  
Washington, DC 20515

Rep. Barney Frank  
Ranking Member  
Financial Services Committee  
U.S. House of Representatives  
2252 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Chairman Bachus and Ranking Member Frank:

CFA Institute<sup>1</sup> appreciates the opportunity to provide our views on the draft Investment Adviser Oversight Act of 2012 (the “Act”). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

### **The SEC Should Examine Investment Advisers**

As stated in our letter to the Securities and Exchange Commission dated 1 December 2010, we believe the SEC is best suited to conduct investment adviser examinations and to introduce needed improvements to the examinations process if the agency is afforded the funding needed to meet its regulatory mandates.

Further, investment advisers will have to pay higher fees to fund the kinds of improvements needed, regardless of who is responsible for conducting those exams. We believe that permitting the SEC to impose fees on investment advisers to pay for such examinations is consistent with existing authority granted to the SEC by Congress permitting it to impose fees on securities transactions, securities registrations and proxy contests. Doing so would address the lack of adequate resources available to the SEC in the

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<sup>1</sup> CFA Institute is a global, not-for-profit professional association of nearly 106,100 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom nearly 95,200 hold the Chartered Financial Analyst<sup>®</sup> (CFA<sup>®</sup>) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.



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past that contributed, at least in part in our view, to the Commission's record in recent years regarding adviser examinations.

As noted in our December 2010 letter to the SEC, we believe that delegation of examination authority to a body outside of the SEC risks redundancy, confusion and a dilution of the examination-enforcement relationship. Moreover, the Act also appears to cover small investment advisers — those with assets under management of less than \$25 million — already overseen by state administrators. Requiring such advisers to pay fees to support a new or existing SRO on top of the fees they already must pay to state authorities would put many such firms at risk of going out of business, according to statements from some of our members who are investment advisers.

### **Changes Are Needed to the Adviser Exam Process**

We do agree with the sentiments inherent in the Act that investment adviser examinations must improve. First, adviser examinations need to occur more frequently. Second, such examinations must address the fiduciary nature of the advisory relationship. Third, they should verify that advisers have compliance procedures to ensure that what they say to clients is consistent with what independent sources like custodians have to say.

Again, we believe these improvements are most efficiently achieved by having the SEC continue with its adviser examinations system due to at least two reasons. First, they have long-term experience in applying the fiduciary standard that is inherent in the Investment Advisers Act of 1940. Second, while there are other things that should be part of judicious adviser examinations, the examinations performed by the SEC already ensure that compliance activities are consistent with the advisers' fiduciary requirements and with the advisers' own internal policies and procedures.

### **Members Support SEC Examinations**

Our views are backed by [a November 2010 survey](#) of more than 1,300 CFA Institute members. In that survey, 57 percent said they favor having the SEC continue to oversee registered investment advisers. By comparison, just 25 percent of respondents supported handing investment adviser oversight over to the Financial Industry Regulatory Authority,



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and just 18 percent favored another option such as creation of a new self-regulatory organization to oversee the examination function.

### **Conclusion**

We believe that the SEC has specialized expertise in overseeing investment advisers that should not be diluted by delegating examination authority to an outside body. Instead, we continue to support the allocation of needed resources to the SEC to enable it to fulfill its mandated responsibilities with regard to examination and enforcement programs for investment advisers. Should you have any questions about our positions, please do not hesitate to contact me at [kurt.schacht@cfainstitute.org](mailto:kurt.schacht@cfainstitute.org), or 212.754.7526; or James C. Allen, CFA at [james.allen@cfainstitute.org](mailto:james.allen@cfainstitute.org) or 434.951.5558.

Sincerely,

/s/ Kurt Schacht

Kurt Schacht, CFA  
Managing Director  
Standards and Financial Market Integrity  
CFA Institute

/s/ James C. Allen

James C. Allen, CFA  
Head, Capital Markets Policy  
CFA Institute