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TESTIMONY OF CHET HELCK

CHAIRMAN-ELECT, SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION
AND
CEO, GLOBAL PRIVATE CLIENT GROUP
RAYMOND JAMES FINANCIAL, INC.

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

HEARING ON: H.R. 4624, THE INVESTMENT ADVISER
OVERSIGHT ACT OF 2012

JUNE 6, 2012

Introduction

Chairman Bachus, Ranking Member Frank, and members of the Committee: My name is Chet Helck. I am the Chairman-Elect of the Securities Industry and Financial Markets Association ("**SIFMA**").[1] I am also the CEO of the Global Private Client Group of Raymond James Financial, Inc., which has over 6000 financial advisers operating in 2500 locations in all 50 states who serve over 2,000,000 client accounts. Thank you for the opportunity to testify at this important hearing.

Today I will present SIFMA's views generally, in support of the creation of an

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

independent, self-funded regulatory organization for retail investment advisers and specifically, in support of H.R. 4624, the Investment Adviser Oversight Act, as introduced by Chairman Bachus and co-sponsored by Representative McCarthy.

Over the years, the retail advisory services of investment advisers and broker-dealers have converged and in some cases, those services are indistinguishable, particularly for individual clients. Where the services have become essentially identical, we believe that individual clients would benefit from, and be better protected by, consistent standards, consistent examination, and consistent oversight for investment advisers and broker-dealers.

We support this bill because we believe it will result in enhanced oversight of retail investment advisers and thereby better serve and protect individual clients. We further support the bill because its purpose is not to foist *new* regulatory oversight on retail investment advisers, but to restore the oversight that is already supposed to be happening – but is not, while relieving pressure on the limited examination resources of the Securities and Exchange Commission ("**SEC**").

A. The same conduct should be subject to the same standard.

SIFMA's support for a so-called self-regulatory organization ("**SRO**") for retail advisers is premised on the recognition that broker-dealers provide some of the *same* services as investment advisers – including providing personalized investment advice to individual clients. We believe that when broker-dealers and investment advisers

provide the *same* service, they should be held to the *same* standard. That is why SIFMA supports the establishment of a uniform fiduciary standard for broker-dealers and investment advisers when they provide personalized investment advice about securities to retail customers.[2]

Our support is predicated upon appropriate cost-benefit analysis, and the standard being implemented in a manner that preserves investor choice, is cost-effective and business model neutral, and avoids regulatory duplication or conflict. We believe that a uniform fiduciary standard is consistent with current best practices in our industry and will result in a heightened focus on serving the best interests of individual clients.

B. The same conduct should be subject to the same level of examination and oversight.

We believe that an investment adviser and broker-dealer who provide the same service to individual clients should be subject to the same level of examination and oversight. Currently, investment advisers are not subject to SRO oversight and are inspected by the SEC only about once every eleven years.[3] Broker-dealers, on the

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[2] SIFMA's position is limited to individual retail customers or clients, *i.e.*, natural persons who use investment advice for personal, family or household purposes. *See Hearing Before the H.Comm. on Financial Servs., Subcomm. on Cap. Markets and Gov't Sponsored Ent.*, 112th Cong. (Sept. 13, 2011) (statement of John Taft, Chairman, SIFMA), available at http://financialservices.house.gov/UploadedFiles/091311taft.pdf.

[3] SEC, Division of Investment Management, Study on Enhancing Investment Adviser Examinations, as required by Dodd-Frank Section 914 (Jan. 2011) at p.14, available at http://sec.gov/news/studies/2011/914studyfinal.pdf ("**Dodd-Frank Section 914 Study**").

other hand, are subject to FINRA and SEC regulation, and are generally inspected biannually.

This gap in regulatory oversight simply must be addressed. Clients deserve the same level of regulatory protection regardless of the status of their intermediary. But that is simply not the case today: adviser examinations are not happening with the frequency and regularity as those of broker-dealers. This lack of oversight is unacceptable, given that billions of dollars of retail assets are entrusted to registered investment advisers. We cannot allow this situation to persist.

In short, retail customers of investment advisers should be able to expect and benefit from the same level of oversight and examination that is currently applied to broker-dealers. As we move toward a uniform fiduciary standard for brokers and advisers, the case for taking action now is even more compelling.

Thus, where broker-dealers and investment advisers provide the identical service to individual clients, and as we develop a uniform standard to govern that conduct, we ought to also ensure uniform examination and oversight of brokers and advisers. Retail customers deserve the same level of protection and congruity in their securities regulations. Thus, we support H.R. 4624 because we believe it will help ensure uniform examination and oversight of investment advisers and broker-dealers that provide retail advisory services, and thereby directly benefit and protect our clients.

C. The SEC's Dodd-Frank Section 914 Study reveals the IRO option as the most practical and prudent.

In a January 2011 *Study on Enhancing Investment Adviser Examinations*, as required by Dodd-Frank Section 914, the SEC's Division of Investment Management ("**IM**") recommended that Congress consider three alternative approaches:

1) authorize the SEC to impose user fees on investment advisers to fund their examination by the SEC;

2) authorize FINRA to examine dual-registrants for compliance with the Advisers Act; or

3) authorize a regulatory organization to examine investment advisers.[4]

1) SEC Examination. With respect to the SEC examination alternative, we note that last year, the SEC was able to examine only 8% of registered investment advisers, primarily due to lack of funding. Since 2004, the number of examinations has decreased by nearly 30% and the frequency by 50%.[5] Thus, the SEC is not now fulfilling its examination mandate with respect to investment advisers.[6] We believe, as many do, that SEC budgetary and resource constraints will continue into the foreseeable future, resulting in a continuing decline in the number and frequency of

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[4] *Id.*

[5] See Commissioner Elisse B. Walter Statement on Study Enhancing Investment Adviser Examinations at p.2 (January 2011), available at http://sec.gov/news/speech/2011/spch011911ebw.pdf.

[6] *Id.*

investment adviser examinations by the SEC.[7]

Consequently, we do not believe that the SEC is a viable or practical candidate to fill the "examination enhancer" role contemplated by Dodd-Frank Section 914.

2) FINRA Examination of Dual-Registrants. The FINRA examination of dual-registrants alternative would not provide any enhanced oversight or examination for the thousands of retail, stand-alone, registered investment advisers ("**RIAs**") that are not affiliated with a broker-dealer. This option is not only grossly under-inclusive, but also inconsistent with taking a uniform approach to the examination and oversight of advisers who provide the identical services to retail customers.

This approach also represents a risk to clients, as it would encourage even more brokers to flee from the highly-regulated broker-dealer environment – which is subject to rigorous FINRA and SEC oversight – to a once-a-decade examination regime operated by an overworked and underfunded SEC. Considering that the number of investment advisers has increased nearly 39% in recent years, while the amount of assets under management has increased even more – by nearly 59%,[8] we believe that this second alternative does not address concerns about inadequate adviser oversight.

3) Regulatory Organization for Retail Investment Advisers. We believe that the retail adviser regulatory organization alternative – which is embodied in the

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[7] *Id.*

[8] *Id.*

Investment Adviser Oversight Act – is the most practical and prudent approach. As we explained in our comment letter to the SEC on Section 914,[9] for many decades now, oversight of broker-dealers has been bolstered by the examination and oversight activities of regulatory organizations like FINRA, particularly with respect to conduct directed toward retail customers.

A regulatory organization with examination authority over the thousands of RIAs that are not regularly examined by the SEC today would be an effective supplement to the SEC's resources. In light of the limited SEC resources available for examining and monitoring independent RIAs, examination and oversight of independent RIAs would be enhanced by a retail adviser regulatory organization.

A regulatory organization with jurisdiction over RIAs would be able to devote sufficient examination resources to ensure investor protection standards are upheld. In addition, such an organization would be able to focus on the specific activities and challenges that are unique to RIAs, thus making the regulatory organization's efforts more effective.

Today, FINRA oversees nearly 630,000 individual registered representatives (over 250,000 of whom are dually registered as investment adviser representatives), and has approximately 3,400 full-time employees, approximately 1,100 of which are focused on examining member firms. Under this bill, we are talking about

[9] SIFMA comment letter to SEC re: Section 914 (Jan. 12, 2011), available at http://www.sifma.org/issues/item.aspx?id=22972.

examination and oversight for an additional, approximately 14,500 retail advisory firms (which excludes institutional and state-regulated advisers).[10] The SEC currently has about 500 full-time employees dedicated to its advisory program. To increase the frequency of examination to FINRA's average, however, the SEC would need to add more than 2,000 examiners to its advisory program – representing a 50% increase in total SEC full-time employees.[11] FINRA, on the other hand, estimates it would require only an additional 900 full-time employees to perform the entire function of examining and overseeing retail advisers.

In our view, and based on the foregoing, the regulatory organization option most directly answers the question posed by Congress under Dodd-Frank Section 914 because it would in fact increase the frequency and number of examinations for retail investment advisers. The regulatory organization model has worked well for broker-dealers to ensure frequent and regular examinations, and thereby stem abuses, enhance compliance, and protect investors, and we expect the same benefits would extend to retail investment advisers – and more importantly to their clients – under a retail adviser SRO model.

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[10] See FINRA Investment Estimate for FINRA IA SRO, available at http://www.finra.org/web/groups/corporate/@corp/@about/documents/corporate/p126542.pdf.

[11] See Commissioner Elisse B. Walter Statement on Study Enhancing Investment Adviser Examinations at p.2 (January 2011), available at http://sec.gov/news/speech/2011/spch011911ebw.pdf.

D. SRO does not mean self-regulation or self-policing; Here, we seek to create an independent, self-funded, regulatory organization ("IRO").

Nowadays, when you hear the term self-regulatory organization, or SRO, in the context of the securities industry, we all need to understand that the term is truly a misnomer. Here, we are not talking about "self" regulation. We are not asking an industry to police itself. After many decades of legislation, oversight, and regulation, regulatory organizations like FINRA are not controlled, or unduly influenced, by the industry they regulate.

On the contrary, today, regulatory organizations like FINRA are widely viewed and respected as independent, self-funded, organizations whose priority is to protect investors. As recently as 2010, Congress recognized this shift when it designated the Municipal Securities Rulemaking Board ("**MSRB**") as the regulatory authority to carry out expanded oversight of the municipal marketplace, and remodeled the MSRB's Board of Directors after FINRA's as a majority public board, in order to better protect market participants and the public.[12]

Thus, today, the term independent, self-funded, regulatory organization – or IRO – is the more accurate way to describe and convey the integrity and quality of the modern financial services regulatory organization. This is the type of regulatory organization that H.R. 4624 would authorize, and that we would support.

[12] See Dodd-Frank Act Section 975.

E. The regulatory organization option does not necessarily mean FINRA.

Notably, the bill does not require that there be a single IRO for retail advisers, nor does it require that the retail adviser IRO be FINRA. Certainly, the bill allows for both possibilities, but does not compel either. We support this level of flexibility and optionality.

In the event there is more than one IRO for retail advisers, however, we believe that an adviser IRO should be required to coordinate its examinations and other activities with respect to a member that is also overseen by another IRO, in order to avoid overlapping or duplicative oversight by two IROs. In addition, we believe that an investment adviser dually registered as a broker-dealer should be permitted to register with a single IRO, if the IRO is registered as both an adviser IRO and a broker-dealer regulatory organization.

F. The regulatory organization option provides a unique opportunity to improve upon the existing SRO regime.

As I mentioned, the current regulatory organization model is the product of decades of evolution into its present independent, self-funded, investor-protection focused, state. But it's not perfect. FINRA, for example, gets its fair share of complaints and frankly, there's room for improvement.

That is why we need to recognize that this bill represents an important opportunity to improve upon the existing SRO regime – to improve upon FINRA – to take what is widely agreed to be working well at FINRA and other SROs, and to build

upon it to create an optimal regulatory organization for retail investment advisers.

In this regard, we believe that H.R. 4624 generally strikes an appropriate balance among the interests of ensuring robust oversight of retail investment advisers, avoiding an unreasonably burdensome and costly regulatory regime for those advisers, and providing for appropriate transparency and accountability of the retail adviser IRO.

Thus, we strongly believe that certain regulatory enhancements in the bill should be equally extended to broker-dealers under FINRA, and other SROs that oversee broker-dealers. Specifically, we support the bill's approach to the rulemaking process for adviser IROs, and we generally support the requirement for the IRO to consider costs and benefits. We do believe, however, that the cost-benefit requirements should be enhanced to improve the transparency and accountability of the IRO and the quality and efficiency of its regulations.

Moreover, we believe that both the rulemaking procedures and cost-benefit requirements applicable to the retail adviser IRO should be equally extended and applied to regulatory organizations registered under the Securities Exchange Act of 1934, thereby harmonizing the investment adviser and broker-dealer regulatory regimes.

Finally, we believe the bill recognizes the need to strike the appropriate balance between subjecting advisers that predominantly serve retail customers to IRO oversight, while exempting advisers to institutional clients. Thus, we would be

supportive of the Committee's efforts to ensure that retail advisers are subject to IRO oversight and institutional advisers remain under the jurisdiction of the SEC.

Given these suggested improvements, we believe that H.R. 4624, the Investment Adviser Oversight Act, represents an opportunity for Congress to accomplish the goal of comparable examination and oversight of brokers and advisers who provide personalized investment advice to individual clients.

Conclusion

Thank you, Chairman Bachus, Ranking Member Frank, and members of the Committee, for allowing me to present SIFMA's views. SIFMA and its members remain committed to being constructive participants in the process of establishing a uniform fiduciary standard for broker-dealers and investment advisers, and ensuring uniform examination and oversight of the standard through the creation of an IRO for retail advisers.

We support H.R. 4624 because:

(i) the bill fills a gaping void in current investment adviser oversight, by creating a retail adviser IRO that will increase the amount and frequency of investment adviser examinations and oversight, while relieving long-standing pressure on the limited examination resources of the SEC;

(ii) the bill strikes an appropriate balance among the interests of ensuring robust retail adviser oversight, avoiding an unreasonably burdensome and costly regulatory regime, and providing for appropriate transparency and accountability of the organization; and thus,

(iii) the bill provides an opportunity to improve upon the existing regulatory organization regime that now applies to broker-dealers.

Based on the foregoing, we fully expect the bill will better protect and serve individual clients, and thereby build trust and confidence in the financial markets, and ultimately, promote our economic growth, while helping to maintain our competitiveness in the global financial services marketplace.

We stand ready to provide any further assistance requested by this Committee on this important topic.