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fi360 Statement Regarding SEC Study of Enhancing Investment Adviser Examinations

The single most important issue raised by the SEC study on investment adviser exams is simple: the Commission needs more cops on the beat, not a Neighborhood Watch. This might turn out to be the case if an industry-captured SRO regulated investment advisers. As the SEC report recognizes, self-regulatory organizations play a critical role in the regulation of the securities industry. But asking the product providers of Wall Street to govern those who are trusted to provide objective advice to Main Street strikes us as akin to asking pharmaceutical companies to regulate doctors. Both FINRA and the SEC are needed to regulate financial health, but both should retain separate oversight roles, similar to those of the FDA and professional medical board.

We were somewhat surprised and disappointed that the Commission was unable to come up with a unified and concrete recommendation to Congress on whether to authorize the ever-controversial SRO for advisers. On the other hand, let's be frank: we would not have been terribly excited to see a unanimous recommendation for an SRO: quite the opposite. We therefore applaud what we believe to be an excellent, quantitative analysis performed by Commission staff in lieu of the Commissioners' struggle to reach consensus. And, in particular, we wholeheartedly support their option for self-funding the agency's struggling examination program.

In our view, self-funding through user fees paid by advisor firms is not only the most cost-effective way of keeping pace with the rapid growth in the advisor sector, but the best way of ensuring investor protection. Perhaps an important side benefit to user fees would be the elimination of any possibility of an industry-captured SRO – a downside actually pointed out in the staff report. In our view, depending on the governance structure, an SRO subject to industry pressure would be in an advantageous position to water down the fiduciary standard for advisers and brokers, thereby reducing investor protection.

No doubt the SEC staff felt compelled to offer additional options, in this instance what are essentially two slightly different SRO versions to Congress. However, we would urge Congress to reject these as ill-conceived in terms of enhancing investor protection, and in the long-run, more costly. This last problem was noted as well in the staff report.

In summary, no compelling evidence has been offered that the Investment Advisers Act of 1940 is broken; this venerable law has stood the test of time for some 70 years. The SEC simply needs more cops on the beat to enforce it. In a time of severe fiscal restraints on Capitol Hill, we hope that self-funding would appeal to Congress as a reasonable compromise in terms of fiscal prudence and, more importantly, as an option that is best for investor protection.

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