

## ***Executive Summary***

### **January 2011 SEC Report to Congress: Study on Enhancing Investment Adviser Examinations<sup>1</sup>**

#### **I. Background**

Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>2</sup> required the Securities and Exchange Commission (“SEC” or “Commission”) to review and report back to Congress on the following:

- a. the SEC’s exam cycle for federally registered investment advisers (RIAs) over the last five years;
- b. the extent to which designating one or more self-regulatory organizations (SROs) to augment SEC oversight would improve the frequency of exams; and
- c. current and potential new approaches to exams of dually registered broker-dealers and RIAs or affiliated broker-dealers and RIAs.

The SEC Commissioners were unable to reach consensus on a recommendation and delegated to SEC staff the task of recommending options to Congress.

#### **II. Current Examination Program.**

- a. The SEC’s Office of Compliance Inspections and Examinations (OCIE), operating from SEC headquarters in Washington, D.C. and 11 regional offices, routinely examines RIAs for the purpose of:
  - i. Improving compliance;
  - ii. Preventing fraud;
  - iii. Monitoring risk; and
  - iv. Helping to shape future regulatory policy.

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<sup>1</sup> See Staff of the Division of Investment Management of the U.S. Securities and Exchange Commission, “Study on Enhancing Investment Adviser Examinations,” January 2011, at <http://www.sec.gov/news/studies/2011/914studyfinal.pdf>.

<sup>2</sup> See Sec. 914, “Study on Enhancing Investment Adviser Examinations,” Dodd-Frank Wall Street Reform and Consumer Protection Act, <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173enr/pdf/BILLS-111hr4173enr.pdf>, at 455.

### III. Frequency of Examination Cycle.

- a. Overall, the annual inspection cycle declined from 18% of RIAs in 2004 to 9% of RIAs in 2010, or roughly once every 11 years for each RIA.
- b. De-registration of mid-sized advisers from the SEC this year (a net decrease of about 3,350) under the Dodd-Frank Act will result in a greater percentage of RIAs being examined in the near term.
- c. This temporary increase in frequency of exams, however, will be offset by continued growth in the number of federally registered RIAs.
- d. SEC staff does not believe the Commission will have “sufficient capacity” in the short or long-term to conduct effective examinations.
- e. SEC report provides numerous charts illustrating decline in inspection cycle and projected growth in adviser registrations and assets under management.<sup>3</sup>

### IV. Options Proposed by SEC Staff.

SEC staff recommended that Congress consider the following three options to strengthen the Commission’s examination program:

- a. **Self-Funding** – Authorize the Commission to impose user fees on SEC-registered investment advisers (RIAs or IAs).
- b. **SRO** – Authorize one or more SROs, under SEC oversight, to examine all SEC-registered IAs.
- c. **Limited SRO** – Authorize FINRA to examine dual registrants, i.e. investment advisers of dually registered broker-dealers, for compliance with the Investment Advisers Act of 1940.

In addition to the official report, Commissioner Elisse Walter issued a separate statement expressing her disappointment with the SEC staff’s final report and recommendations.<sup>4</sup>

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<sup>3</sup> See fi360 ‘Fact Sheet’ with detailed summary, [http://www.fi360.com/main/pdf/SROstudy\\_factsheet\\_012011.pdf](http://www.fi360.com/main/pdf/SROstudy_factsheet_012011.pdf).

<sup>4</sup> See SEC Commissioner Elisse B. Walter, “Statement on Study Enhancing Investment Adviser Examinations (Required by Section 914 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act)”, January 2011, at <http://www.sec.gov/news/speech/2011/spch011911ebw.pdf>.

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For more information and commentary on the SEC's study, visit the fi360 blog: [http://blog.fi360.com/fi360\\_blog/2011/01/fi360-comments-on-the-secs-sro-report.html](http://blog.fi360.com/fi360_blog/2011/01/fi360-comments-on-the-secs-sro-report.html)