The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 26222

June 7, 2012

ICI Submits Statement for Record at Hearing on Investment Adviser Oversight Act of 2012

[26222]

June 7, 2012

TO: BROKER/DEALER ADVISORY COMMITTEE No. 26-12
CLOSED-END INVESTMENT COMPANY MEMBERS No. 31-12
INVESTMENT ADVISER MEMBERS No. 12-12
SEC RULES MEMBERS No. 48-12 RE: ICI SUBMITS STATEMENT FOR RECORD AT HEARING ON INVESTMENT ADVISER OVERSIGHT ACT OF 2012

On June 6, the U.S. House of Representatives Committee on Financial Services held a hearing on H.R. 4624, the Investment Adviser Oversight Act of 2012. ICI submitted a statement for the record in connection with the hearing. [1]

ICI did not take an affirmative position with respect to the bill that would authorize the creation of a self-regulatory organization ("SRO") for advisers to retail clients. The bill would exempt from SRO registration (1) advisers to registered investment companies (funds), (2) certain advisers to non-retail clients, and (3) retail advisers affiliated with exempt advisers if 90% of the assets under management of all affiliated advisers are attributable to institutional clients. [2] ICI's statement focuses on the importance of preserving the exemptions for advisers to funds and advisory affiliates of fund advisers.

The statement expresses the view that the SEC must continue to be the primary regulator of investment advisers to registered funds because of the broad oversight the SEC provides to registered funds, their advisers and fund service providers and of the benefits of direct oversight of fund advisers by the SEC – the only regulator that can adequately oversee compliance both with the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The statement explains that the SEC could not provide effective oversight of registered funds without examining the fund adviser, which is the most important service provider to a fund. Requiring fund advisers to be members of an SRO could result in the SEC deferring its oversight responsibilities to an SRO, which would detract from the SEC's ability to obtain a complete picture of the fund and its service providers and to assess potential risks.

Alternatively, the statement explains that, if advisers to registered funds became subject to both SEC and SRO oversight, registered funds and their shareholders would be significantly harmed by the imposition of duplicative examinations that will only result in additional costs without any corresponding benefits. The extra cost of SRO membership fees and compliance costs associated with managing duplicative or conflicting SEC and SRO regulations would ultimately be borne by fund shareholders. The statement also takes the view that there would be little or no benefits to imposing additional costs for SRO inspections of fund advisers because the SEC already allocates its limited resources to examining registered funds in recognition of the importance of funds.

Finally, ICI's statement supports retaining the SEC as the primary regulator for advisers that are affiliated with fund advisers. The statement explains that this approach would ensure consistent regulation of advisers under common control and would avoid inconsistencies that would result if commonly controlled advisers were subject to examination by two different regulators.

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endnotes

[1] The statement is available at http://www.ici.org/pdf/12_house_inv_adv.pdf

[2] The institutional advisers that would remain subject to SEC examination include those that advise private funds, ERISA plans, collective trust funds, endowments, foundations, non-U.S. clients, and other institutional clients.
