**Statement of Thomas D. Currey, CLU, ChFC**

**on behalf of**


**NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS**

**prepared for the House Financial Services Committee hearing entitled**

**"H.R. 4624, the Investment Adviser Oversight Act of 2012"**

**June 6, 2012**

Good Morning Chairman Bachus, Ranking Member Frank, and members of the Committee. My name is Tom Currey, and I am here on behalf of the National Association of Insurance and Financial Advisors (NAIFA). I am from Grand Prairie, TX and in 2009 and 2010 I served as the elected President for NAIFA. For more than 30 years I have been licensed as a registered representative for my broker-dealer; and for more than 10 years I have been licensed as an investment adviser representative for my corporate RIA. This is in addition to my insurance licenses in Texas and California. Thank you for the opportunity to speak to you today regarding the regulation and examination of investment advisers. On behalf of the members of NAIFA, we appreciate your work on this important issue and your interest in our views.

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its

members.

My testimony this morning will focus on why NAIFA supports the Investment Adviser Oversight Act of 2012. We believe it is an important step in the right direction for protecting consumers and enhancing public faith in all financial professionals. NAIFA members support smart, balanced regulation – regulation that provides appropriate consumer protections and effective and efficient oversight without creating compliance burdens that would impede the delivery of consumer financial services. H.R. 4624 satisfies those criteria. The legislation addresses an important gap in regulatory oversight – the regular examination of investment advisers – with a common sense regulatory fix – empowering a self-regulatory organization with authority to oversee investment advisers.

As it stands today, the Securities and Exchange Commission (SEC) is tasked with examining registered investment advisers, but by its own admission the SEC only examines approximately 8% percent of investment advisers each year. Further, because of its risk-based approach to examinations, a full one-third of investment advisers have never been subject to an SEC compliance examination. NAIFA agrees with the concerns raised by other stakeholders and policymakers that this constitutes a critical regulatory gap that could lead to undetected problems that may cause financial harm to consumers or, at the very least, could lead to trust and credibility problems for the entire industry. Any breach of that trust will not only harm industry participants such as NAIFA members but, more importantly, the middle market investors we serve. That is why NAIFA supported Section 914 of the Dodd-Frank Act requiring the SEC to review and analyze the need for enhanced examination and enforcement resources, and that is why we support H.R. 4624.

After much consideration, we believe the Financial Industry Regulatory Authority (FINRA) is best equipped to serve as the Self-Regulatory Organization (SRO) for investment advisers. Granting FINRA this authority would be the least disruptive and most cost-efficient way to eliminate this trust gap by instilling confidence in consumers that their investment advisers, like broker-dealers, are subject to regular supervision and compliance examinations.

**NAIFA Members and their Regulatory Environment**

This issue is important to us because, although all NAIFA members are licensed insurance producers, a majority of our members also provide broader financial services to their clients. Nearly two-thirds of NAIFA members are licensed as registered representatives of broker-dealers (Registered Representatives) to sell securities to their clients; 41% of these NAIFA members are also licensed as investment adviser representatives (IAR) for a corporate Registered Investment Adviser (RIA). In other words, more than one-quarter of NAIFA members are "dually registered" as both Registered Representatives and IARs. In addition, a small number of NAIFA members are IARs, but are not Registered Representatives.

NAIFA members who sell securities are subject to significant compliance and regulatory requirements that provide an abundance of ongoing investor protections through vigorous enforcement of various rules imposed by the SEC and FINRA and, in turn, implemented by broker-dealers. On top of this, because our members are also licensed insurance professionals, they must adhere to comprehensive regulations imposed by the various state insurance departments.

As a result of these regulatory layers, NAIFA members are among the most comprehensively regulated individuals in the financial services industry. We spend an average of 514 hours a year on compliance and 12 hours per year on examinations. Direct compliance costs to NAIFA members currently average $8,877 a year: $264 in exam expenses, $569 in broker-dealer and/or registered investment adviser fees, and $8,044 in staff expenses related to compliance. This is a substantial amount of time and money, particularly because many of our members are small business owners who may only have one additional person on staff.

These regulatory requirements are significant, which is why NAIFA advocates for smart and efficient regulation that balances the need to protect consumers with the need to ensure that financial professionals are not subject to unnecessary or duplicative regulations that make it difficult to serve the clients who depend on us. Most NAIFA members are community-based small business owners providing affordable financial services to middle-market investors. The

clear majority of NAIFA members' clients have household incomes of less than $100,000, and a sizeable percentage of our members' clients have less than $50,000 invested in the financial markets. An overwhelming majority of NAIFA members serve Main Street, not Wall Street.

This if true for my practice as well. My clients on average have between $50,000 and $250,000 in investable assets. Almost all of them had less than $50,000 to invest before I worked with them to develop their financial plan.

**Section 914 of Dodd-Frank and the SEC's Report to Congress**

Section 914 of the Dodd-Frank Act required the SEC to review and analyze the need for enhanced examination and enforcement resources for investment advisers and revise its regulations as necessary, as well as to report to Congress on regulatory or legislative steps necessary to address concerns raised in the SEC study.

Pursuant to this mandate, in January 2011, the SEC reported the results of its review to Congress. In its study the SEC conceded that resource limitations, coupled with a rise in registrants, have made and will continue to make it difficult for the SEC to provide effective oversight of SEC-registered investment advisers. Although the number of SEC-registered investment advisers has increased in the past six years, the report notes that the amount of SEC resources dedicated to adviser examinations has decreased. To close the examination gap the SEC staff suggested to Congress the following three options to address the problem:

1) Authorize the SEC to impose user fees on SEC-registered investment advisers to fund their examinations by the SEC Office of Compliance Inspections and Examinations (OCIE);

2) Authorize one or more SROs to examine, subject to SEC oversight, all SEC-registered investment advisers; or

3) Authorize FINRA to examine dual registrants for compliance with the Advisers Act.

**NAIFA's Position**

NAIFA members believe consumers are best served when they are confident that all financial professionals are subject to reasonable oversight to ensure compliance with rules and regulations. The regulatory structure in place today does not breed this confidence because investment advisers are examined infrequently or not at all. Statistics have made it very clear that investment adviser examinations are not occurring with sufficient frequency—on average, SEC-registered investment advisers are examined approximately once per decade. This is a serious gap in regulatory oversight.

NAIFA supports reasonably-structured and-timed investment adviser examinations to ensure that all financial professionals are complying with the law and that consumers are adequately protected. FINRA's broker-dealer model results in examinations approximately every two years. For NAIFA members who are Registered Representatives, broker-dealers review our members for compliance at a rate of 100% per year. Although we have some recommendations for improving broker-dealer regulation generally, we believe FINRA's examination schedule ensures that the SRO is familiar with the broker-dealers that it oversees and is in a position to see problems or deviations from the norm, including potentially regulatory violations.

In 2008 FINRA examined 57 percent of its broker-dealer members, and it examined 54 percent of its members in 2009.[1] The SEC's OCIE, by contrast, examined just 9 percent of its investment advisers, a 29.8% rate of decrease since 2004.[2] In 2011 the SEC planned on examining just 11 percent of investment advisers, but could not even reach that minimal level, and ultimately examined just 8% of advisers last year. This year the Commission estimates it will examine just 9% of investment advisers.[3]

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[1] SEC Staff Study, *Study on Investment Advisers and Broker Dealers* (Jan. 2011), *available at* http://www.sec/gov/news/studies/2011/913studyfinal.pdf, at pg. 30.
[2] *Id.* at pg. 14.
[3] SEC, Budget Justification for the Budget of the SEC, Fiscal Year 2013 (Feb. 2012), available at www.sec.gov/about/secfy13congbudgjust.pdf at pg. 24.

Thus, changes must be made in order to ensure investment advisers are subject to regular compliance reviews. While we recognize that there is general agreement about the investor protection gap that exists, there is disagreement over how to solve the problem. From NAIFA's perspective, the Investment Adviser Oversight Act is the most sound and practical approach. Allowing FINRA to serve as the SRO for investment advisers is simple common sense. Virtually all NAIFA members who are investment adviser representatives are also broker-dealer registered representatives. Thus, they are *already* subject to comprehensive FINRA oversight. NAIFA believes that authorizing FINRA to examine investment advisers is simply the most efficient option for dual-registered NAIFA members.

Simultaneous broker-dealer and registered investment adviser exams would not only lead to a more effective examination process, it would be less burdensome and intrusive for financial professionals than having to submit to different exams at different times in order to comply with the rules and schedules of different regulators or SROs. It would clearly be more efficient and cost effective for FINRA to expand its current, substantial examination capabilities to cover registered investment advisers than it would be to establish new SROs to perform this function.

Some stakeholders have stated that they support an approach that would increase the rate of SEC examinations of investment advisers by imposing a user fee on registered investment advisers. Although this might have the potential to increase the number of examinations, NAIFA has questions about the ability of the SEC to actually do the work given the Commission's resource challenges. Moreover, it would greatly increase the likelihood that NAIFA members, and other financial professionals like them, would be subject to more inefficient, duplicative, burdensome regulatory processes, as opposed to the more streamlined process that we believe FINRA could provide under H.R. 4624.

Another reason NAIFA supports the approach taken by the Investment Adviser Oversight Act is that it provides certainty that ***all*** investment advisers, regardless of state or federal oversight, will be subject to a routine examination. The Dodd-Frank Act increased the asset threshold for state-registered advisers to advisers with up to $100 million in assets under management (AUM). As a result, approximately 4,000 additional investment advisers have

shifted from SEC to state oversight. However the degree to which advisers are examined varies by state, and some states, such as New York and Wyoming, have no examination program. Thus H.R.4624 appropriately establishes a benchmark that all states much examine state registered investment advisers at least once every four years. All states that meet the criteria will retain full authority over state registered advisers. For states that cannot meet that standard, the authority would shift to an SRO. We believe this is the best approach to instill confidence that all investment advisers, like broker-dealers, will be subject to regular reviews.

We recognize that reasonable regulations are necessary to have an efficient and fair marketplace. That is why we support giving FINRA enhanced regulatory oversight over investment advisers, including NAIFA members, even though it *increases* the likelihood that they will be subject to examination.

Having said that, we believe it is critical that all stakeholders have a say in the regulatory process. If FINRA (or any other SRO) is given examination authority over investment adviser representatives, we strongly believe that an *independent* investment adviser representative should have a place on that entity's governing board. Independent adviser representatives have a unique perspective on their business model—one that is not shared by investment advisers or their affiliated representatives. The regulating body should hear that perspective. Past experience with FINRA's regulation of broker-dealers has shown that if all perspectives do not get through to regulators, compliance obligations – and costs – tend to get pushed down to registered representatives. This ultimately gets passed along to the consumer in the form of increased fees and/or diminished engagement with their financial professional (who may be busy dealing with unnecessary regulatory burdens). It is important to avoid this scenario with an investment adviser SRO, and we think Board representation will go a long way to providing a voice for the independent IAR.

In addition, it is important that any adviser representative subject to examination be given adequate due process rights before they are disciplined. This should include, at a minimum, the right to a hearing at which there is adequate opportunity to present evidence supporting their position before they have their license (and livelihood) taken away from them.

**Conclusion**

NAIFA members realize that there are many complexities associated with examining investment advisers and their representatives. After much consideration, we believe supporting H.R.4624 -- and more specifically giving FINRA the authority to conduct such examinations -- is the most reasonable, efficient path to achieving our mutually compatible goals. We appreciate the opportunity to share our views with you today on this critical issue. We look forward to working with the Committee to ensure that investors are both protected and have access to competent financial advice and services.

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