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Making Advisers' Voices Heard on Capitol Hill



IAA 2019 Policy Priorities

Investment Advisers Act

The statutory framework of the Investment Advisers Act of 1940 has proven remarkably robust in protecting investors while allowing the advisory profession to grow to benefit investors, the capital markets and the U.S. economy. However, the financial services landscape has evolved significantly over the last 79 years, and certain of the regulations adopted pursuant to the Advisers Act have not kept pace with these developments. For this reason, the IAA supports a review of the regulatory regime governing investment advisers to ensure that regulation is effective, efficient, tailored and appropriately targeted to protecting investors and fostering capital formation.

Among other things, we support: modernizing the advertising rule – adopted in 1961 – and replacing it with a principles-based approach that better reflects modern communications and investor needs for meaningful information. For example, the restrictive prohibitions under current law have put a damper on the use of social media by advisers to communicate with existing and prospective clients. We also support clarifying the needlessly complex custody rule to facilitate advisers' compliance and more effectively protect investors; reviewing the recordkeeping and electronic delivery rules in light of current technology; and streamlining and updating the rules on political contributions. We are pleased that the SEC has indicated that it will take up revisions to the advertising and custody rules in the short term and will continue to provide constructive recommendations to the SEC staff on these important initiatives.

Fiduciary Standard

The IAA has long advocated that all financial professionals who provide investment advice about securities to clients should be required to act pursuant to fiduciary principles. The SEC adopted a comprehensive rulemaking package on June 5 that is intended to raise the standard of conduct for broker-dealers, reaffirm the fiduciary duty under the Advisers Act, and reduce investor confusion as to the services offered by and standards applicable to their financial professional. The SEC's package contains four separate but interrelated components:

- An interpretation that reaffirms the investment adviser's special relationship of trust and confidence with, and overarching fiduciary duties to, its clients.
- A new Regulation Best Interest, which imposes a best interest obligation on brokers when they provide securities recommendations to retail customers.
- A new requirement for advisers and brokers to provide a relationship summary (Form CRS) to investors before entering into a relationship with or making recommendations to them.
- An interpretation of the exclusion from application of the Advisers Act for brokers whose provision of investment advice is "solely incidental" to their brokerage business.

The IAA will work with its members as they seek to implement the new requirements. We will also continue to advocate before the SEC to ensure that its interpretation, implementation, and enforcement of this package preserve the overarching Advisers Act fiduciary duty, hold financial professionals to a robust investor-protective standard, clearly delineate the essential differences between brokerage and advisory activities, and are effective in achieving the goals of the new disclosures.

Tax Reform/Retirement Savings

As advocated by the IAA, Congress rejected both mandatory FIFO and "Rothification" in the Tax Cuts and Jobs Act (TCJA), thereby preserving pre-existing tax incentives for voluntary retirement savings. We will continue to oppose any legislation that would jeopardize retirement savings. We strongly favor restoring and expanding the deductibility of advisory fees as an itemized business deduction to incentivize investors to seek advice about saving for retirement. And we generally support broader legislation encouraging greater retirement savings by American taxpayers.

We are also seeking reconsideration of the broad exclusion for service businesses from the new 20 percent pass-through deduction, which unfairly disadvantages advisory firms.

SEC Oversight of Advisers

Effective oversight of the advisory profession is critical to investor protection. The IAA believes that the SEC, an experienced and accountable governmental regulator, is in the best position to provide that oversight, and should retain its primacy in investment adviser regulation. To that end, the agency must be able to dedicate sufficient resources for effective oversight of advisory firms and must use those resources efficiently.

The IAA strongly opposes outsourcing of governmental oversight because, fundamentally, examinations are a government function. Further, imposition of a self-regulatory organization (such as FINRA) would impose a costly, unnecessary, and ill-fitting additional layer of regulation and bureaucracy on advisers without providing a commensurate investor protection benefit.

Level Playing Field: Active and Passive Management

The IAA supports policy approaches that promote a level playing field among investment strategies. Both active and passive strategies have valuable and important roles to play in investment management in the best interest of clients and the markets. Laws and regulations should not explicitly or implicitly favor one strategy over the other. For example, retirement legislation should not include provisions that favor passive management.

Cybersecurity/Data Privacy

The growing threat of cyber attacks has created a need for more cooperation and collaboration within the private sector and between the private and public sectors. The IAA supports laws that facilitate cybersecurity information sharing, both among companies and between companies and law enforcement agencies. We also advocate for, and are pleased that the Treasury Department has recommended, creation of a single, national data breach notification regime that would make it easier for affected companies to comply with the law while ensuring that clients and customers are protected. We also support a uniform, national approach to data privacy law in order to create consistency and reduce complexity.

Impact of SEC Regulations on Small Businesses

The IAA strongly supports the “Investment Adviser Regulatory Flexibility Improvement Act,” bi-partisan legislation passed by the House in 2018 as part of JOBS Act 3.0, which has been introduced in the current Congress as H.R. 2436. This bill is designed to ease the regulatory burden on smaller advisory firms by requiring the SEC to analyze the impact of regulations on small businesses and consider alternative approaches that minimize the burden on these smaller firms in accordance with the Regulatory Flexibility Act (RegFlex).

More than 7,000 advisers employ 10 or fewer non-clerical employees. However, the SEC has been able to avoid application of RegFlex to advisory firms because the agency defines small businesses to include only investment advisers with less than \$25 million in AUM, despite the fact that the basic threshold for SEC registration is \$100 million. The Investment Adviser Regulatory Flexibility Improvement Act would require the SEC to come up with an alternative definition of small business for purposes of RegFlex that takes into account factors including the number of a firm’s employees.

Proxy Voting

Advisers that are responsible for voting proxies in volume typically engage third-party proxy advisory firms to help them with voting mechanics, research, and/or analytics. These services are particularly important to assist advisers in the administrative aspects of their substantial proxy voting responsibilities. While the research provided by proxy advisory firms is a valuable part of the analysis advisers undertake, advisers retain ultimate fiduciary responsibility to vote proxies in their clients’ best interest and they make those decisions independently. The IAA opposes efforts by corporate issuers and others to restrict the use of these firms by investment advisers or to impose a new regulatory regime on proxy advisory firms that would increase the cost of these services prohibitively for advisers and their clients or increase barriers to entry. Further, there is robust guidance setting forth investment advisers’ duties with respect to proxy voting and no additional regulation or guidance is needed.

FSOC/Stress Tests

The IAA supported legislation in the 115th Congress — as well as FSOC regulatory proposals — to make the systemically important financial institution (SIFI) process more accountable and transparent and that would focus on systemically important activities rather than on individual companies. We also supported legislation in the 115th Congress that would eliminate the requirement of stress testing by nonbank financial institutions, including advisory firms with more than \$10 billion in AUM. We support the re-introduction of these bills in the 116th Congress.

Derivatives Regulation

Investment advisers are subject to overlapping and often conflicting regulation by the SEC and CFTC. This duplicative regulation imposes costly compliance burdens that provide little benefit to investors. The IAA supports SEC and CFTC coordination to streamline regulation of commodity pool operators and commodity trading advisors that are SEC-registered advisers through exemptions, uniform rules, and substituted compliance.

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