

IAA 2018 POLICY PRIORITIES

Investment Advisers Act

The statutory framework of the Investment Advisers Act of 1940 has proven remarkably robust in protecting investors and in 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 78 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 and repealing its 1961 prohibitions of testimonials and past specific recommendations for advertisements, which do not reflect modern communications and investor needs; 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.

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 recently proposed a package of rulemakings and interpretations regarding the standards of conduct for broker-dealers and investment advisers that are designed to enhance retail investor protection and reduce investors' confusion about the advice and services they're receiving from their investment professional. The IAA is pleased that, in approving the proposals, all of the Commissioners

focused on the importance of public input on all aspects of the package of proposals, including investor testing on the efficacy of proposed new disclosures.

The IAA commends the SEC for taking action to raise the standard of conduct for broker-dealers and address investor confusion. But we share concerns expressed by the majority of Commissioners about whether the proposals will actually achieve those objectives, which we view as crucial for investor protection. The IAA is committed to working with the Commission to get this right.

Cybersecurity

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 the enactment of legislation that facilitates cybersecurity information sharing, both among companies and between companies and law enforcement agencies. We also support 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.

Level Playing Field: Active and Passive Management

The IAA supports regulatory 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. Regulation should not explicitly or implicitly favor one strategy over the other.

FSOC/Stress Tests

The IAA supports H.R. 4061, the “Financial Stability Oversight Council Improvement Act,” legislation adopted by the House that would provide FSOC with additional ways to address potential risks to the financial system, while also making the systemically important financial institution (SIFI) process more accountable and transparent. Importantly, the bill would ensure that nonbank SIFI designations are reserved for the limited cases in which identified risks to financial stability cannot be addressed more effectively by an entity’s primary regulator or action by the entity itself.

We also support H.R. 4566, the “Alleviating Stress Test Burdens to Help Investors Act,” legislation also passed by the House that would exempt nonbank financial institutions, including advisory firms, from the Dodd-Frank Act’s stress-testing requirements. Stress tests for advisers are unwarranted given the agency nature of investment advisory firms and the SEC’s adoption of new rules, including those that require stress testing, designed to promote effective liquidity risk management by mutual funds.

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 and unnecessary additional layer of regulation and bureaucracy on advisers without providing a commensurate benefit to investor protection.

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 and uniform rules.

Tax Reform/Retirement Savings

As advocated by the IAA, Congress rejected both mandatory FIFO and “Rothification,” preserving pre-existing tax incentives for voluntary retirement savings, in the Tax Cuts and Jobs Act. However, we strongly favor restoring the deductibility of advisory fees as an itemized business deduction. We are also seeking reconsideration of the broad exclusion for service businesses, including advisory firms, from the new 20 percent pass-through deduction.

Protection for Senior Citizens from Financial Abuse

The IAA applauds the inclusion of the “SeniorSafe Act” in the recently enacted “Economic Growth, Regulatory Relief, and Consumer Protection Act.” The SeniorSafe Act provides a safe harbor from civil liability for investment advisers, banks and broker-dealers (and their employees) who report suspected elder financial abuse to appropriate governmental authorities, so long as the employee received proper training from the employer on identifying financial abuse. This will lead to greater protection for a particularly vulnerable segment of U.S. investors.

Impact of SEC Regulations on Small Business

For purposes of evaluating the economic impact of its rules, the SEC defines “small business” to include only investment advisory firms with less than \$25 million in assets under management. This definition has not been updated in over 35 years. Given the \$100 million threshold for SEC registration, virtually no SEC-registered advisers are deemed to be “small” for cost-benefit purposes even though more than 6,000 registered advisory firms employ 10 or fewer non-clerical employees. The IAA supports Treasury’s October 2017 recommendation that the SEC update its definitions so it properly assesses the impact of regulations on smaller advisers.

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