

VIA ELECTRONIC MAIL

May 24, 2011

Mr. Bryan Lantagne
Office of the Secretary of the Commonwealth
Attn: Proposed Regulations
Securities Division, Room 1701
One Ashburton Place
Boston, MA 02108

RE: Proposed Regulations Related to the Use of Expert Network Firms, Exemption of Private Funds, and Other Regulatory Changes

Mr. Lantagne:

In April 2011, the Massachusetts Securities Division published and requested comment on proposed changes to its regulations. The proposed changes include, among other things, new registration requirements for hedge funds and other private funds¹ (Proposed Amendments). The Financial Services Institute (FSI)² welcomes this opportunity to comment on the Proposed Amendments.

We are pleased to see that the Massachusetts Securities Division is quickly responding to the changes called for under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). However, we are concerned that moving forward with the Proposed Amendments at this time may result in a lack of uniformity among the states and may create regulations that are inconsistent with the SEC's final rules. We also have concerns related to the timing of the Proposed Amendments. Our concerns are addressed in more detail below.

Background on FSI Members

FSI represents independent broker-dealers (IBD) and the independent financial advisors that affiliate with them. The IBD community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

¹ Change in Exclusion/Exemption Requirements for Hedge Funds and other "Private Funds," available at <http://www.sec.state.ma.us/sct/sctnewregs/newreg2.htm>.

² The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 125 independent broker-dealers and more than 16,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

In the U.S., approximately 201,000 financial advisors – or 64% percent of all practicing registered representatives – operate as self-employed independent contractors, rather than employees, of their affiliated broker-dealer firm.³ These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI’s mission is to ensure our members operate in a regulatory environment that is fair and balanced. FSI’s advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments on the Proposed Amendments

As stated above, we are pleased to see that the Massachusetts Securities Division is quickly responding to the changes called for under the Dodd-Frank Act. However, we are concerned that moving forward with the Proposed Amendments at this time may result in a lack of uniformity among the states and may create regulations that are inconsistent with the SEC’s final rules. Our concerns are addressed in more detail below.

- **Timing of the Proposed Amendments** – The Proposed Amendments relate to the regulation of investment advisers to hedge funds and other private funds. In response to the changes called for in the Dodd-Frank Act, the SEC published Release No. IA-3110⁵ and Release No. IA-3111⁶ soliciting comments related to, among other things, amendments to the Investment Advisers Act of 1940 (‘40 Act) that deal with the registration and exemption of private fund advisers. Comments in response to Release No. IA-3110 and Release No. IA-3111 were due to the SEC on or before January 24, 2011. As of the writing of this comment letter, the SEC has not approved the rules

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁵ See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3110, (Nov. 19, 2010) (to be codified at 17 C.F.R. §§ 275 and 279) (the “Implementing Release”), available at <http://sec.gov/rules/proposed/2010/ia-3110.pdf>.

⁶ See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3111 (Nov. 19, 2010) (to be codified at 17 C.F.R. § 275), available at <http://sec.gov/rules/proposed/2010/ia-3111.pdf>.

outlined in Release No. IA-3110 or Release No. IA-3111, and has not published another iteration of the Rules.

While we appreciate and understand the desire of the Massachusetts Securities Division to be proactive on the elimination of the "private adviser" exemption under Section 203(b)(3) of 40' Act, we believe that the Proposed Amendments are premature given the pending nature of the SEC's proposed rules. We urge the Massachusetts Securities Division to withhold approval of the Proposed Amendments until the SEC finalizes their rules related to the registration and exemption of private fund advisers. .

- **State Uniformity** - On December 20, 2010, the North American Securities Administrators Association (NASAA) published and requested comment on a Proposed Model Rule on Private Fund Adviser Registration and Exemption (NASAA Proposed Model Rule).⁷ Specifically, as drafted the Proposed Model Rule will provide guidance to NASAA's members,⁸ including the Massachusetts Securities Division, in creating uniform rules governing the registration and reporting requirements for advisers to private funds. As of the writing of this comment letter, the NASAA Proposed Model Rule has not been approved by the NASAA Board of Directors, and NASAA has not published another iteration of the Proposed Model Rule for comment.

If the Massachusetts Securities Division moves forward with the Proposed Amendments, there is a substantial likelihood that the Final Rule that will be adopted will not be in line with those of the other 49 states. This has the potential to create a myriad of inconsistent and conflicting regulatory requirements with which firms will be required to comply. Uniformity within the 50 states is critically important as we move forward with financial regulatory reform. Therefore, we urge the Massachusetts Securities Division to avoid this problem by waiting for the SEC to issue its final rule, and then adopting a rule that is consistent with other states.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to comment on the Proposed Amendments.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8493.

Respectfully submitted,



Matthew L. Schwartz, Esq.
Government Affairs Counsel

⁷ See Proposed NASAA Model Rule on Private Fund Adviser Registration and Exemption, available at http://www.nasaa.org/content/Files/Exempt_Report_Adviser_Model%20Rule.pdf.

⁸ As of the writing of this comment letter, NASAA's membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada, and Mexico.