

# MARKETCOUNSEL

June 23, 2011

*VIA EMAIL ONLY*

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

RE: Comments to proposed rules concerning investments advisors discretion and custody requirements

Dear Sir/Madam,

Please accept our comments to the Office of the Secretary of the Commonwealth's (the "Commonwealth") proposed rule regarding Investment Adviser Discretion and Custody Requirements. MarketCounsel supports the Commonwealth's attempt to afford more protection to investors, but respectfully, we do not believe the proposed rule changes achieve that goal. The Commonwealth's interests in protecting investors needs to be balanced against the interests of smaller advisers and the costs associated with maintaining their businesses.

MarketCounsel is a business and regulatory compliance consulting firm to some of the country's preeminent entrepreneurial investment advisers. In addition, our affiliated law firm, the Hamburger Law Firm, renders coordinated legal services to a similar but more expansive universe of clients. All told, we render professional services to more than 700 investment advisers. We host an outsourced compliance platform registered investment advisers ranging from start-ups with little or no assets under management to firms managing billions of dollars.

## INVESTMENT ADVISER DISCRETION AND CUSTODY REQUIREMENTS

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The proposed rule changes seek to, among other things, raise the bonding requirement for advisers who exercise discretionary authority over client funds from \$10,000 to \$50,000. Other commenters have suggested that this could increase the annual cost of maintaining a bond for smaller advisers up to five (5) times what they are currently paying. In contrast the \$40,000 increase in the bonding requirement does not appear to significantly mitigate the harm that clients would suffer if an event triggering use of the bond occurred. Respectfully, there does not seem to be a direct correlation between this increase in the bonding requirement and the increase in protection that would be afforded to clients.

We recommend that the Commonwealth refrains from increasing the threshold. Alternatively, we suggest that the bonding requirement be amended so that it is proportionate to the amount of assets being managed by the investment advisory firm.

**CONCLUSION**

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MarketCounsel believes that the proposed rule changes require modification prior to adoption. MarketCounsel believes that the bonding requirement should remain at its current levels, or should be amended to take into consideration the amount of assets a registered investment adviser is currently managing.

MarketCounsel hopes that our comments, made on behalf of us and our entrepreneurial, closely held investment adviser clients are beneficial to this process. Thank you for the opportunity to provide input and should you have any questions or require any additional information, we remain available at your convenience.

Best regards,  
MARKETCOUNSEL, LLC

By:   
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