



Investment Advisers Association of Florida

February 19, 2015

Ms. Pam Epting, Director
Florida Office of Financial Regulation
Division of Securities
200 E. Gaines Street
Tallahassee, Florida 32399-0379

Re: Eliminate the Requirement to Send Itemized Fee Notices be Sent to Clients as Part of Prohibited Business Practices (Proposed Prohibited Business Practices Rule 69W-600.0131(1)(v))

Ms. Epting:

The Investment Advisers Association of Florida ("IAAF") proposes that the Office of Financial Regulation ("OFR") not include the requirement for State Registered Investment Advisers ("RIAs") send a client an itemized fee invoice as part of the prohibited business practices under Rule 69W-600.0131(1)(v). We are making this request for the following reasons:

- 1) Rule 69W-600.0131(1)(v) **duplicates what is already required** under Rule 69W-600.0132(2)(i)2.b. This creates a scenario where the State RIA will have violated two (2) rules if they have custody solely because they perform direct fee deductions.
- 2) Federal Registered Investment Advisers ("RIAs") are not required to send fee invoices to clients. This **creates an operating cost disadvantage** to prepare mail outs in compliance with this rule.
- 3) Requiring State RIAs send itemized fee invoices only **increases the potential for costly regulatory violations with no upside protection to the investing public.**
- 4) Clients are inundated with **repetitive information**, which creates confusion.
- 5) Clients are **not** being presented new information. If the State RIA has done their job of disclosure, each client will receive:
 - a. A Firm Brochure (Form ADV Part 2A), which discloses the fee schedule and how management fees are calculated;
 - b. An Investment Advisory Agreement, which the client signed that discloses the agreed to management fee charged to the client's account;
 - c. A copy of the new account form from the qualified custodian, which the client must sign authorizing fee deductions from their account;
 - d. Account statements from the qualified custodian, which discloses all activities in the client's account for the quarter.



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- 6) Failing to send fee invoices to clients **creates a false custody scenario**. Physical possession of client funds and/or securities remains with the qualified custodian. It is Florida's regulations that are, by definition, causing the State RIA to have custody.
- 7) It limits the type of fee calculation a State RIA can use over what their federal counterpart can. For example, if a State RIA's formula for their fee calculation includes the average daily balance of a clients account for the quarterly billing period, the requirement to "itemize the fee" in their invoices would demand that they list the daily balances for 90-days, add them together, and then divide the total by 90. This would be impractical and confusing to clients to get a multiple page fee worksheet as an invoice.

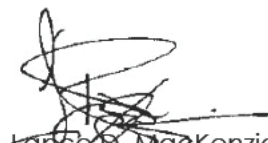
If the proposed amendment is adopted, State RIAs will not only have violated this rule, Rule 69W-600.0131(1)(v), but they would also be violating Rule 69W-600.0132(2)(i) if they fail to send fee invoices. **OFR is increasing the burden of compliance, not decreasing it!** Furthermore, the proposed change to the fine matrix table includes both of these rules as a disciplinary event under violation #210 and #215.

Pursuant to Florida Statutes 120.541(1)(a), the IAAF is submitting, on behalf of its members (the "substantially affected persons"), an alternative, which is to **remove** itemized fee invoice requirement from the prohibited business practices of Rule 69W-600.0131(1), the safekeeping requirements of Rule 69W-600.0132(2)(i), and from the fine matrix table under violation #210 and #215 since the requirement to prepare itemized fee invoices: (1) are not mandated by statute; (2) increase regulatory costs (Florida Statutes 120.541(1)(b)); and, (3) arguably do nothing to protect investors.

By implementing our recommendations levels the playing field between State and Federal RIAs. State RIAs should not be penalized because their assets under management are less than \$100 million.

Should you have any questions regarding the IAAF's proposed changes to these rules, please do not hesitate to give me a call.

God Bless,



Larice B. MacKenzie





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February 19, 2015

Ms. Pam Epting, Director
Florida Office of Financial Regulation
Division of Securities
200 E. Gaines Street
Tallahassee, Florida 32399-0379

Re: Requiring an Itemized Fee Notices be Sent to Clients Creates a Hardship and a Disadvantage to State Registered Investment Advisers (Proposed Custody Rule 69W-600.0132(2)(i)2.b.)

Ms. Epting:

The Investment Advisers Association of Florida ("IAAF") proposes that the Office of Financial Regulation ("OFR") remove Rule 69W-600.0132(2)(i)2.b. under "Direct Fee Deduction" the requirement to concurrently send an itemized fee invoice to clients that includes the formula used to calculate the fee each time a fee is directly deducted from client accounts for the following reasons:

- 1) Federal Registered Investment Advisers ("RIAs") are not required to send fee invoices to clients. This **creates an operating cost disadvantage** to prepare mail outs in compliance with this rule.
- 2) Requiring State RIAs send itemized fee invoices only **increases the potential for costly regulatory violations with no upside protection to the investing public.**
- 3) Clients are inundated with **repetitive information**, which creates confusion.
- 4) Clients are **not** being presented new information. If the State RIA has done their job of disclosure, each client will receive:
 - a. A Firm Brochure (Form ADV Part 2A), which discloses the fee schedule and how management fees are calculated;
 - b. An Investment Advisory Agreement, which the client signed that discloses the agreed to management fee charged to the client's account;
 - c. A copy of the new account form the qualified custodian, which the client must sign authorizing fee deductions from their account;
 - d. Account statements from the qualified custodian, which discloses all activities in the client's account for the quarter.
- 5) Failing to send fee invoices to clients **creates a false custody scenario.** Physical possession of client funds and/or securities remains with the qualified custodian. It is Florida's regulations that are, by definition, causing the State RIA to have custody.



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- 6) It limits the type of fee calculation a State RIA can use over what their federal counterpart can. For example, if a State RIA's formula for their fee calculation includes the average daily balance of a clients account for the quarterly billing period, the requirement to "itemize the fee" in their invoices would demand that they list the daily balances for 90-days, add them together, and then divide the total by 90. This would be impractical and confusing to clients to get a multiple page fee worksheet as an invoice.

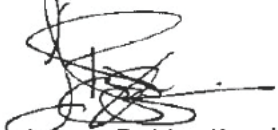
We have noted that OFR has proposed changes to 69W-600.0131 to included, as part of the prohibited business practice for RIAs, new rule 69W-600.0131(1)(v) requiring State RIAs to send itemized fee invoices to clients each time a fee is directly deducted from client accounts. If these proposed changes are adopted, a State RIA will not only have violated the Rule 69W-600.0132(2)(i) but they would also be violating Rule 69W-600.0131(1)(v) if they fail to send fee invoices. **OFR is increasing the burden of compliance, not decreasing it!** Furthermore, the proposed change to the fine matrix table includes both of these rules as a disciplinary event under violation #210 and #215.

Pursuant to Florida Statutes 120.541(1)(a), the IAAF is submitting, on behalf of its members (the "substantially affected persons"), an alternative, which is to **remove** itemized fee invoices from the safekeeping requirements of Rule 69W-600.0132(2)(i), the prohibited business practices of Rule 69W-600.0131(1), and from the fine matrix table under violation #210 and #215 since the requirement to prepare itemized fee invoices: (1) are not mandated by statute; (2) increase regulatory costs (Florida Statutes 120.541(1)(b)); and, (3) arguably do nothing to protect investors.

By implementing our recommendations levels the playing field between State and Federal RIAs. State RIAs should not be penalized because their assets under management are less than \$100 million.

Should you have any questions regarding the IAAF's proposed changes to these rules, please do not hesitate to give me a call.

God Bless,



Lance D. MacKenzie





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February 19, 2015

Ms. Pam Epting, Director
Florida Office of Financial Regulation
Division of Securities
200 E. Gaines Street
Tallahassee, Florida 32399-0379

Re: Eliminate the Minimum Net Capital Requirement for Registered investment Advisers who do not have Custody (Proposed Net Capital Rule 69W-600.0161(1)(b))

Ms. Epting:

The Investment Advisers Association of Florida ("IAAF") proposes that the Office of Financial Regulation ("OFR") eliminate the minimum net capital requirement of Rule 69W-600.0161(1)(b) and the annual reporting requirements of Rule 69W-600.0161(2)(b) if the only reason State Registered Investment Advisers ("RIAs") have custody is solely due to the fact they directly deduction fees, or have custody but have implemented the safekeeping requirements of Rule 69W-600.0132(3)(d), (3)(e), or (3)(f). We are making this request for the following reasons:

- 1) Even though "shall maintain at all times" has been replaced with "shall maintain" under Rule 69W-600.0161(1)(b) regarding the minimum net capital State RIAs must maintain, it **does not eliminate the requirement of a daily calculation** that has previously been argued. OFR Examiners would still expect the net capital to exceed \$2,500 on the day of the exam.
- 2) GAAP compliant financial statements, as required by Rule 69W-600.0161(1)(c), are accrual based accounting. This means State RIAs, as argued in point 1, **would have to daily record accounting transaction by their advisory practice into their financial records**. Things like: accounts payable, accounts receivable, short-term/long-term liabilities, etc. must be recorded into the financial records when an invoice is made, a bill is received, and a purchase made.
- 3) Requiring a net capital calculation made in accordance with GAAP, as required by Rule 69W-600.0161(1)(c), would require, when billing clients in advance/arrears, **a daily re-calculation of earned fees with a corresponding correction to liabilities**. This is an overly burdensome regulation and overkill by OFR.
- 4) Federal RIAs are not required to maintain a minimum net capital. This **creates an operating cost disadvantage** to State RIAs to comply with the net capital requirement and hire a CPA/bookkeeper to prepare GAAP compliant financial statements.
- 5) Requiring State RIAs meet a minimum net capital requirement only **increases the potential for costly regulatory violations** with no upside protection to the investing public.



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- 6) Florida Statutes Chapter 517.12(9)(b) states that OFR **may** require a minimum net capital for State RIAs to assure adequate protection to the investment public. There has been no finding by OFR to show that requiring State RIAs to maintain a minimum net capital of \$2,500 protects the public. In fact, the only thing the net capital rule has proven to be is a **cost prohibitive measure to prevent persons from becoming State RIAs and a tool to administer administrative fines.**

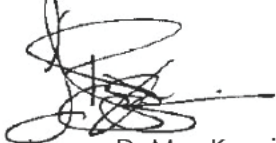
OFR has not made any concessions to our request to minimize State RIAs regulatory burden, and has essentially left the net capital requirements intact as originally written. **OFR has made no attempt to decrease the regulatory burden facing State RIAs!**

Pursuant to Florida Statutes 120.541(1)(a), the IAAF is submitting, on behalf of its members (the "substantially affected persons"), an alternative, which is to **remove** the net capital requirements of Rule 69W-600.0161(1)(b), the financial reporting requirements of Rule 69W-600.0161(2)(b), and from the fine matrix table under violation #212 since the proposed minimum net capital requirement for investment advisers and the resulting annual financial statement filings: (1) are not mandated by statute; (2) increase regulatory costs (Florida Statutes 120.541(1)(b)); and, (3) arguably do nothing to protect investors.

By implementing our recommendations levels the playing field between State and Federal RIAs. State RIAs should not be penalized because their assets under management are less than \$100 million.

Should you have any questions regarding the IAAF's proposed changes to these rules, please do not hesitate to give me a call.

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Lance D. MacKenzie

