August 6, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. IA-4889; File No. S7-09-18; Request for Comment on Enhancing Investment Adviser Regulation; Federal Licensing and Continuing Education

Dear Mr. Fields,

The Investments and Wealth Institute f/k/a The Investment Management Consultants Association ("IWI" or the "Institute")[1] offers comment to the Securities and Exchange Commission ("SEC" or "Commission") with respect to its invitation to provide feedback on potential harmonization of certain broker-dealer and investment adviser rules.[2] As a professional association and advanced, industry-leading education provider and standards body serving the securities industry, we are pleased to submit our views on federal licensing and continuing education of investment adviser representatives ("IARs").[3]

We strongly commend the Commission for raising the question of ongoing competency requirements as part of a federal licensing scheme. As noted many times over the years by the Commission and its staff, advisory firms and their agents have fiduciary duties of loyalty and care, which translates into a fundamental obligation to provide clients with unbiased and competent investment advice. Neither is mutually exclusive if the IAR is expected to act in the clients' best interests; without honesty and utmost good faith, the advisor cannot fulfill his/her duty of loyalty. And without the requisite qualifications and an ongoing obligation to maintain competency in his/her core areas of expertise, the advisor cannot fulfill the duty of care in helping clients achieve their investment goals and objectives. The Section 913 staff study by the SEC provides an excellent overview and comparison of an advisor's duties to its counterpart at a brokerage firm. This Release queries whether future regulatory action is needed to improve harmonization in areas where both entities provide overlapping services to retail investors. Our comments focus solely on whether the Commission should subject IARs of federally registered firms to continuing education and licensing requirements.

We wholeheartedly agree with the concept that investment fiduciaries should maintain their competencies through continuing education ("CE") requirements, but at this time do not believe it necessary, or in the interest of retail investors, or industry participants, for that matter, for the SEC to propose a rulemaking. Moving forward with this initiative would result in duplicative regulation inasmuch as nearly all state-licensed IARs, which includes those affiliated with SEC-registered advisory firms,

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[1] The Institute was established in 1985 to deliver premier investment consulting and wealth management education and credentials, including the CIMA®, CPWA®, and RMA(SM) certifications. IWI's 12,000 members manage approximately $3 trillion in assets for individual and institutional clients. The CIMA certification is accredited by the American National Standards Institute in personnel certification under the international standard ANSI/ISO 17024. In addition, the CIMA and CPWA certifications require completion of executive education taught by faculty of top 20 business schools including, among others, the University of Pennsylvania, Wharton School of Business, University of Chicago, Booth, and the Yale School of Management.

[2] *Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation,* SEC Rel. No. IA-4889 (Apr. 18, 2018).

[3] Advisers Act rule 203A-3(a) (definition of "investment adviser representative").

are likely to be subject to CE requirements by the states in the near future. As you are aware, the states have this authority. In 1996, Congress attempted to strike a balance in state and federal oversight of registered investment advisers ("RIAs") when it enacted the National Securities Markets Improvement Act of 1996 ("NSMIA")[4] that included, among other things, preserving the authority of states administrators to "license, or otherwise qualify any investment adviser representative [of an SEC-registered advisory firm] who has a place of business located within that State…"[5]

At the time of its own extensive NSMIA rulemaking activities, the SEC did not express an interest in establishing federal competency requirements or a separate licensing scheme for IARs under its jurisdiction. Perhaps this was because the North American Securities Administrators Association ("NASAA"), the organization representing state securities administrators, had years earlier established a model rule that established a threshold exam applicable to all IARs. Since dual registration by the SEC and the states was required pre-NSMIA, federal IARs were covered. Congress paid special attention to coordination after dividing up the RIA population between the states and SEC, and consistent with NSMIA's state-federal coordination provisions, NASAA's entrance exams – the Series 65 and 66 exams -- continued to apply to the vast majority of IARs on the state and federal level.[6] NSMIA in many ways served as a catalyst, in our opinion, in promoting uniformity across the board in other important areas of state regulation.[7]

This coordinated arrangement covering IAR qualifications has, over the years, worked well for the securities industry in addition to enhancing protection for retail investors by ensuring a baseline competency requirement. NASAA, it should be noted, post-NSMIA subsequently expanded its threshold exams for IARs (the Series 65 and 66 exams) to include a competency element in addition to the knowledge of securities law. Moreover, NASAA has periodically updated the exam over the years with the assistance of outside competency experts. For IARs who desire more specialized training, the private sector has afforded numerous professional designations to enhance their competencies. And some certification bodies, including the Institute, also require rigorous, cutting-edge competency models involving continuing education requirements in order for designees to maintain their certification.[8]

To the point of the SEC introducing ongoing education requirements at the federal level, NASAA earlier this year alleviated that need by proposing continuing education requirements for all IARs, consistent with the delegation of authority provided by Congress under NSMIA.[9] Given its commendable track record in establishing and maintaining threshold competency requirements over nearly two decades, and the probability that the scope of its anticipated model rule will cover nearly all federal IARs providing advice to retail investors, we urge the Commission not to move forward with a rulemaking at this time, unless it is solely to fill any gaps in retail investment advice not covered by NASAA's anticipated model rule; or if certain states fail to adopt the model rule; or if the SEC determines that the quality of the educational content is substandard. We certainly hope and encourage the SEC to work collaboratively with NASAA in meeting the fundamental objective of requiring ongoing, quality education programs for IARs.

We ask that you let NASAA take the lead on the CE initiative. We have considerable faith that NASAA will continue its quality work to ensure that advisors meet or exceed baseline education standards. Moreover, we are concerned that if the SEC

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[4] P.L. 104–290 (Oct. 11, 1996).

[5] *Id.*, at sec. 203A.(b)(1)A).

[6] *See, e.g.* "NASAA Examination Requirements for Investment Advisers and Investment Adviser Representatives Model Rule 204(b)(6)-1" (adopted Sept. 3, 1987), available at http://www.nasaa.org/wp-content/uploads/2011/07/23-IA204b61ExamReqadopt9387.pdf.

[7] *See, e.g.,* sec. 222, "State Regulation of Investment Advisers," *Supra note* 4.

[8] The continuing education requirement for CIMA®, CPWA®, and RMA certified professionals is 40 hours earned and reported over a two-year period, including two hours in the field of ethics.

[9] *Supra note* 2, footnote 65, at 28.

were to become involved at this late date with overlapping requirements, and notwithstanding good faith efforts by all parties involved, the overall task of licensing and coordinating CEs for federal IARs would result in additional complexities and unnecessary costs that ultimately would be passed on to retail investors. In addition, we believe that an overlay of federal CE rules to a NASAA regimen would impose special burdens on smaller SEC registrants that cannot scale or absorb new compliance costs as efficiently as the larger firms.

Finally, the Institute believes that if the Commission were inclined to adopt a continued competency model for financial professionals under its jurisdiction, it should recognize the continuing education credits that those professionals submit for maintenance of professional designations, such as the Institute's and other credible designations. With regard to a federal licensing requirement, we believe that federal IARs already licensed by the state securities administrator where they maintain their principal place of business should satisfy any new Commission licensing requirements. Verification should be easy inasmuch as the Investment Adviser Public Disclosure website hosts and periodically updates this information.

We would be happy to discuss any additional questions or concerns that you may have by contacting the undersigned at 303.770.3377.

Sincerely,

Sean R. Walters, CAE
Executive Director & Chief Executive Officer
Investments & Wealth Institute

cc: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Pierce, Commissioner
Dalia Blass, Director, Division of Investment Management
Brett Redfearn, Director, Division of Trading and Markets