



13 February 2012

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Comment Request for Study Regarding Financial Literacy Among Investors;
Release 34-66164; File 4-645**

Dear Ms. Murphy,

The Association of Independent Investors¹ appreciates the opportunity to comment on the Commission's Study Regarding Financial Literacy Among Investors.

The study, which is mandated by §917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is seeking methods to improve the timing, content, and format of disclosures to make investors better informed, or financially more literate. We believe that more can be done to protect investors, some of our concerns include:

Are they Brokers or Advisers? – The Blurring Regulatory Line

The blurring of the regulatory boundaries that separate brokers from registered investment advisers (RIAs) has frustrated investors for well over a decade. In the eyes of investors, there is very little transparency regarding who does what and who, if anyone, is genuinely looking out for the investors' best interests. This confusion has contributed to investors' underlying distrust of the financial services industry.

The issue is driven by the demise of the traditional brokerage business (buying and selling securities on behalf of customers). With commission rates at or near zero, broker-dealers have been pushing into the fee-based, or advisory account business for many years.

However, offering fee-based advisory accounts falls under the Investment Advisers Act of 1940 (Advisers Act), the Act that regulates RIAs, while brokers are governed by the Securities Exchange Act of 1934 (1934 Act). Importantly, brokers and RIAs have very different legal

¹ The Association of Independent Investors Corporation is a not-for-profit organization exclusively dedicated to promoting the interests of independent investors (non-professional investors). For more information please visit our web site: www.aiinvestors.org.

obligations when dealing with their clients. Under the 1934 Act, brokers are held to the “suitability standard” whereas RIAs are held to the “fiduciary standard” under the Advisers Act.

Brokers have been offering fee-based advisory accounts for years by taking advantage of regulatory loopholes and by lobbying for special rules. In 2007, a Federal Appeals Court struck down a Commission Rule that exempted brokers from certain provisions of the Advisers Act, stating that the Commission had over stepped its authority.

Today, brokers continue to offer fee-based advisory accounts through “dual registration,” whereby the broker-dealers and their representatives are registered as both brokers and advisers. Even with dual registration, many issues still remain unresolved. What standard of care (suitability or fiduciary) applies to these dually registered representatives? In many respects, allowing dual registrations is akin to allowing attorneys to represent both plaintiffs and defendants in the same action.

Congress never intended for the regulatory boundaries that separate brokerage activities from RIA activities to become blurred. The regulatory breakdown has clearly been driven by the brokerage industry’s bid for self-preservation, and the Commission has spent years and countless resources grappling with the fallout of this issue. One study seems to lead to yet another study, while investors have been left out in the cold.

Regulators have bent over backwards to accommodate the brokerage industry in this regulatory process – all at the expense of investors. We believe that the Commission should put an end to dual registrations. Broker-dealers and their reps should stick to the brokerage business. If they would prefer being in the advisory business, then they should do so, but they can’t do both.

Asset-Based Pricing – How Much Do Investment Returns Cost?

Investors pay billions of dollars a year in asset-based investment management fees, yet they don’t have a clear understanding of the true cost of their investment returns. Investors seek the services of investment managers for one basic reason – to generate positive investment returns. It makes no difference if the underlying investor is looking for aggressive or conservative returns, or if they opt for a mutual fund, registered investment adviser or a hedge fund. Investors are paying for investment returns.

The only way investors can gauge the true value that they receive from investment managers is when the fees are expressed as a percentage of the returns generated – *how much did I pay to get this return?*

According to the Investment Company Institute, the average expense ratio for an equity mutual fund was 1.45% in 2010². On the surface, these fees may seem nominal, and investment managers are quick to dismiss their fees as *not material*. But when asset-based fees are put into the proper perspective, it becomes obvious how they destroy investor value.

² Investment Company Institute (2011) *2011 Investment Company Fact Book* (51st edition) p.66.

Assume your investment manager generates a return of 10% and you're paying fees and expenses of 1.5% of the value of your account, you'll pay out 15% of your return in fees. Or more realistically, if your return was 5% with the same fee and expense assumptions, you paid a whopping 30% of your return in fees. Again, when the fees are put into the proper perspective of what you're actually paying for, the investment return, investment management can be extremely expensive.

The Commission should require investment professionals who charge asset-based fees to:

- Provide investors with an annual accounting of all the fees and expenses (in absolute dollars) that investors incur in connection with the management of their accounts.
- Clearly express the total fees and expenses incurred as a percentage of the actual trailing 12-month gross return (not as a percentage of the asset value).

Regulators have been spinning their wheels for years trying to figure out how to improve disclosures and make investment management pricing more transparent, and in one simple calculation they can bring it all to the bottom-line. Providing investors with an accurate accounting of fees and expenses and boiling that information down to a useful, easy to understand data point will arm investors with the information they need to make good investment decisions.

Truth in Marketing

There appears to be a universal disconnect between the compliance and the marketing departments at many RIA firms. Time and time again we witness RIA firms' marketing materials that make claims such as: *We have no conflict of interests, our interests are fully aligned with those of our clients, or we don't sell financial products.* Claims like these are subjective in nature and should not be put forward as a fact.

Our concern is well illustrated by GenSpring Family Offices, a registered investment adviser based in the state of Florida. By way of background, GenSpring, with over ten billion dollars in discretionary assets under management, was ranked the number one fee-only adviser in 2011 by Forbes Magazine. Their minimum annual fee is \$85,000 a year.

The first page of GenSpring's web site (see attached as exhibit "A") states:

"Unlike traditional wealth management firms, such as banks, brokerages and trust companies, a GenSpring family office does not sell investment and financial products."

But page 4 of GenSpring's Form ADV Part II states:

Additionally, GenSpring provides investment advice to and/or manages a family of privately pooled investment vehicles, which are organized as domestic limited partnerships, limited liability companies, and offshore corporations, as well as a family of onshore and offshore mutual funds registered under the Investment Company Act of 1940, as amended ("1940 Act) [sic], as a closed-end, non-diversified management investment company, and an unregistered offshore feeder fund (collectively, the

“Investment Funds”)... Such investment funds are almost exclusively offered as access vehicles and are only offered to GenSpring clients.

In our opinion, by any plain english definition the term “access vehicles” is fancy marketing lingo for “investment and financial products.” Additionally, according to GenSpring’s Form ADV Part I, Schedule D, GenSpring actively solicits their clients to invest in many of these products.

As we previously indicated, these kinds of marketing practices are very widespread in the RIA community. We don’t expect advertising and marketing material to be quasi disclosure documents, but marketing material should be consistent with the disclosures and not be deceptive, particularly in light of the fiduciary obligations RIAs owe to both their clients and prospective clients. It is our opinion that misleading marketing practices violate anti-fraud provision of the Advisers Act and we believe that more can be done to enforce this Act and protect investors in this area.

Investor Education

The results of this study will be used to improve investor literacy, presumably through investor education programs. We think that it is appropriate to take a look back at the Commissions’ 1995 Report of the Committee on Compensation Practices, that study committee included legendary investor Warren Buffett. The report noted *“Brokerage firms are not – and cannot be—teaching institutions for investors...”*³

While that report was focused on broker-dealers, we believe that the wisdom from that report can be applied to the entire investment industry sales channel. The closer investor education is to the point of sale, the less objective it is. Therefore, these future educational programs must be conducted by independent and unbiased organizations.

We appreciate the Commission’s consideration of our comments. Please feel free to contact me if we may provide additional information concerning these or other issues.

Sincerely,

-S- Andrew J. Haigney
Andrew J Haigney
Executive Director

³ Tully, D., O’Hara, T., Buffett, W., Mason, R., Hayes, S. (1995, April 19) SEC Study “Report of the Committee on Compensation Practices.” p 16.

Exhibit "A"

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www.genspring.com/ Google

GenSpring Family Offices - Sustaining Family Wealth

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GENSPRING
FAMILY OFFICES

VALUES & CULTURE FAMILY OFFICES RESOURCE CENTER MEDIA

Is there a way to know if an investment manager is a fraud?

GenSpring is a very different kind of wealth management firm.

- Unlike traditional wealth management firms, such as banks, brokerages and trust companies, a GenSpring family office does not sell investment and financial products.
- Family offices oversee and manage the complex financial lives of wealthy families and have the freedom to invest their money with providers around the world.

Around the world, families trust GenSpring's family offices to oversee or manage important aspects of their financial lives ... helping them answer the questions about managing their wealth that **keep them awake at night**. We call these "Keeps Me Awake At Night" questions, or "KMAANs." [Request a deck of KMAAN Cards](#)

What would you like your family office to do for you?

CONTACT US

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