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Contact: Lauren Condoluci
202-470-5367
laurencondoluci@rational360.com

Financial Planning Coalition to Congress: Put Investors and Small Businesses First

*Proposed SRO Legislation is Overly Broad,
Adds Costly Layer of Regulation for Investment Advisers*

WASHINGTON, DC – September 13, 2011 – The Financial Planning Coalition (the Coalition) told Congress today that the concept of creating a new self-regulatory organization (SRO) for investment advisers, as provided in the discussion draft released by House Financial Services Committee Chairman Spencer Bachus (R-Ala.), is unneeded; would add a layer of regulation and impose costs that could be particularly burdensome for small business owners; and may not significantly improve protection for investors.

At a time when the Administration and Congress are working to find ways to create jobs, stimulate economic growth, and cut red tape, the creation of a new SRO is an overly broad approach to correcting the narrow problem of the inadequate frequency of examinations of SEC-registered investment advisers.

In a prepared statement for the record before the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, the Coalition stated: "The proposed investment adviser SRO goes far beyond the targeted approach needed to increase investment adviser examinations."

"Whereas Congress and the SEC have recognized a narrow problem facing oversight of investment advisers," the Coalition stated, "the proposed SRO would have jurisdiction over state-registered investment advisers; have broad rulemaking and enforcement authority; and implement an additional layer of regulation and costs for investment advisers, which could particularly burden small businesses, without the benefit of a thorough cost-benefit analysis."

The Coalition raised additional concerns with the proposed SRO legislation, including:

- The SRO would have jurisdiction over state-registered investment advisers. This would create an anomalous situation in which the SEC, which does not regulate state-registered advisers, would have oversight authority over an SRO that oversees state-registered advisers. This would impose an additional layer of regulation on state-

registered advisers, with potentially conflicting rules and enforcement mechanisms between federal and state regulators.

- The SRO would have broad rulemaking and enforcement authority, yet neither Congress nor the SEC has recognized problems related to the SEC's ability to establish and enforce rules under the Advisers Act.
- The proposed rules of the SRO would not be subject to cost-benefit analysis or requirements under the Administrative Procedures Act.
- The SRO would not be required to be a transparent body, subject to the Freedom of Information Act (FOIA), the Sunshine Act, or other open government laws.
- The SRO is not required to provide its members with basic constitutional protections, such as due process rights.
- While the SEC has approval authority over the SRO's fees, there are no clear limits or restrictions on the structure or amount of fees, potentially creating an unlimited tax on investment advisers.

The Coalition believes that supporting enhanced SEC oversight is the most appropriate solution. "We strongly believe the SEC (and the states) is the appropriate regulator of investment advisers," the Coalition stressed. "We do not believe there is sufficient reason for a change in the policy of direct federal regulation that has largely been effective for such an extended period of time in favor of a costly outsourcing of investment adviser oversight."

The SEC has overseen investment advisers for more than 70 years and has the infrastructure and the specialized expertise in place to do the job. "As the existing SEC oversight of investment advisers generally has been effective, we strongly urge Congress to provide the SEC with the resources necessary to enhance examinations of SEC-registered investment advisers rather than shift oversight to an SRO."

FINRA has suggested that it is capable of overseeing investment advisers. The Coalition noted that that FINRA, at its core, is a membership organization for broker-dealers. The Coalition expressed serious concerns regarding the possibility of FINRA being designated as the SRO for advisers. "We question whether a governance structure that is affiliated with FINRA would allow for the type of truly independent governance that will be critical to ensuring oversight that is not subject to conflicts of interest."

The Coalition also urged support for the Securities and Exchange Commission (SEC) as it moves forward to establish a strong and uniform fiduciary standard of conduct for broker-dealers and investment advisers. "We believe the SEC, which has extensive experience and knowledge of broker-dealer and investment adviser business models, will establish a fiduciary standard of conduct that enhances investor protection while maintaining access to current products and services that are consistent with investors' best interests."

The Coalition argued that the over 75,000 financial planning professionals it represents "provide strong evidence that the fiduciary standard is a practical, flexible, and workable standard no matter if the financial professional providing investment advice is a broker, insurance agent, investment adviser, or financial planner."

Rather than being a burden on businesses, financial planners have recognized the benefits of providing investment advice at a fiduciary standard of care. "Contrary to some who suggest that requiring the fiduciary standard will hurt investors by increasing costs and reducing services, our

experience is just the opposite: providing services with fiduciary accountability is good for investors and good for business.”

The Coalition’s testimony can be found here or online at www.FinancialPlanningCoalition.com.