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Financial Services Committee Debates Changes to Advisor, Broker Regulations

By [Donna Mitchell](#), *Financial Planning*

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Proposals to create a self-regulatory organization for investment advisors and require advisors from all business types to adhere to a uniform fiduciary standard remain among the most divisive issues facing the financial advisory industry.

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But after industry participants aired concerns about an SRO for investment advisors, Tuesday's hearing on both issues before a subcommittee of the House Committee on Financial Services managed to provide a few conciliatory notes from all sides of the debate.

The Financial Services Institute strongly supports legislation authorizing the SEC to approve self-regulatory organizations for investment advisors and believes the Financial Industry Regulatory Authority is in the best position to fill that role, Bill Dwyer, president of national sales and marketing for LPL Financial, and chairman of the FSI, said during the hearing.

"FINRA can set user fees, and it already has more than 1,000 examiners on its staff," Dwyer said. "FSI's support is also based on precedent. FINRA has 70 years [of] experience with the SRO model."

FINRA's model is a private industry one and, when it comes to the regulation of investment advisors, government regulators have unmatched experience, Steven Irwin, chair of the North American Securities Administrators Association's Federal Legislation Committee told the panel in opening remarks.

"The existing securities industry SRO model -- as typified by FINRA -- is replete with conflicts of interest," he said. "Any SRO that depends on its members as its primary funding source faces a heightened susceptibility to industry capture."

The Investment Adviser Association strongly opposes an SRO for investment advisors, David Tittsworth, executive director of the Investment Adviser Association said during his remarks. Among other objections, Tittsworth said such an oversight body would burden advisory firms, typically small businesses, with a costly layer of bureaucracy.

"The SEC, with its 70 years of substantive expertise and experience with the Advisers Act, is in the best position

to govern the activities of advisers,” Tittsworth said. “The costs of instituting user fees at the SEC would be significantly less than the costs to the industry for SRO oversight because of outlays for including hiring, training, and overseeing inspection staff, among other requirements.”

Rep. Spencer Bachus (R.-Ala.), who [proposed a bill](#) authorizing the SEC to appoint self-regulatory organizations for investment advisers, acknowledged opponents’ concerns about how a final law should be implemented.

It was a decidedly different scene from a couple of years ago when fresh anger from the near-collapse of the U.S. financial system spilled over into Congressional sessions like the one held Tuesday.

He specifically addressed concerns that Tittsworth raised about an SRO built on FINRA’s framework. Tittsworth and the IAA have consistently objected to what it views as loose oversight, accountability and transparency at FINRA.

“I do understand your concerns over who oversees FINRA,” Bachus said to Tittsworth. “We do not want to ignore the states’ role, either. If it comes to a bipartisan agreement, there needs to be some role for state regulators and enhanced oversight and transparency for FINRA. That would be an improvement.”

In turn, FINRA Chairman and Chief Executive Officer Richard Ketchum conceded that his organization has and does take some responsibility for not unearthing the fraud at the Madoff Investment Securities soon enough and that the SRO would be willing to accept enhanced oversight from the SEC. Ketchum also seemed to accept that it should stick to its own lane and not interfere with state regulatory authorities.

“Never in our wildest imagination would we imagine a FINRA rule that pre-empts state regulation,” Ketchum said during questioning.

But Ketchum reiterated FINRA’s long-held belief that it has the best industry experience and resources to tackle the job of monitoring investment advisers.

Lawmakers could still face an uphill battle to pass Bachus’ proposed bill considering that many industry participants disagree on which organization should fill that role and whether such a group is absolutely necessary.

An investment advisor SRO would not be a transparent body, Karen Nystrom, the manager of public policy and advocacy at the National Association of Personal Financial Advisors said in a previous interview. “It would not be subject to the Freedom of Information Act or Sunshine laws,” Nystrom said. “This would take openness back a step.”

Opponents to an SRO almost uniformly reject the idea that FINRA should be allowed to fill that role.

FINRA has been wildly successful as a money-making organization for its staff, but it has not been equally beneficial to small broker-dealers, according to Brian Hamburger, founder and managing director of MarketCounsel, a law firm and compliance consultancy based in Englewood, N.J.

“They increase unnecessary regulations for small broker-dealers to benefit large ones, and hand down directives that unfairly affect small as opposed to large ones,” Hamburger said. He added that FINRA’s regulations end up “derailing the hopes and dreams of those who have tried to make a go of it as small broker dealers.”

Lawmakers will have another issue before them, in the SRO debate: whether a group called the Self-Regulatory Authority for Independent Investment Advisers, or SROIIA, will fit the bill. Students at the University of Mississippi School of Law created the group, hoping to create a homegrown investment advisor SRO framework.

“If an SRO is authorized, they will have the best choice,” TJ Collins, co-chief executive officer of SROIIA said during an earlier interview. “They will not be forced to do something they don’t like.”

“The hearing was a good initial vetting of the issues by the committee, but we think it is important to include in the dialogue those, like financial planner professionals, who will be most directly affected by the proposed discussion draft,” Marilyn Mohrman-Gillis, of the Financial Planning Coalition said in a statement.

“Overall, we don’t think there was a compelling case made that an SRO for advisers is the answer to a lot of the problems discussed. We would expect that we’ll be talking more about these issues in the coming months,” she added.

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