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By Danielle Verbrigghe

The [Securities and Exchange Commission](#) (SEC)'s new Investor Advocate Office head has urged Congress for permission to pull the money to fund more registered investment advisor (RIA) examinations from the wallets of those being regulated.

Rick Fleming, investor advocate for the SEC, recommended that Congress authorize the SEC to collect an annual user fee from RIAs, to fund expenses related to investment advisor examinations. He called the measure "long-term, sustainable solution," to fund examinations, in a transcript of an Aug. 19 speech at the 38th annual Southwest Securities Conference in Dallas, Texas.

"There are multiple reasons for the lack of exam coverage, but in my view it primarily boils down to the fact that the SEC has not received sufficient resources to keep up with the burgeoning workload," Fleming said.

The SEC examined about 9% of RIAs in fiscal 2013. If that rate continues, the average RIA would only be examined about once every 11 years, Fleming said. "Investors have a right to expect that their registered investment advisors will be examined more than once every 11 years."

Funding registered investor advisor exams through an industry-wide firm-level fee isn't a new idea. A bill sponsored by Reps. **Maxine Waters** and **John Delaney**, which would require certain investment advisors to pay fees to help cover the costs of inspecting and examining investment advisors, landed in a congressional committee in April 2013. But the bill, HR1627, has remained stalled there since. In a letter last month to the Committee on Financial Services, Rep. Waters called requested a full Committee hearing to consider the bill.

The user fee model is not unlike the method the [Financial Industry Regulatory Authority](#) (FINRA) uses to fund brokerage exams. It would allow the SEC to ramp up the scrutiny on advisory firms by conducting more exams, Fleming said in the speech.

"Admittedly, a shorter examination cycle won't stop all fraud, but I believe it will allow the SEC to halt these types of activities sooner and will provide a stronger deterrent to advisors who might otherwise succumb to the temptation to steal," Fleming said. "It will also curtail other unethical practices, including excessive fees, excessive trading, and undisclosed conflicts of interest."

The SEC in February named Fleming the first head of its Office of the Investor Advocate, a position mandated by the Dodd-Frank Act. In his role, Fleming is tasked with identifying areas where investors would benefit from change to Commission and SRO rules, and proposing changes to promote the interests of investors.

"To some, the idea of a 'user fee' sounds a lot like a tax," Fleming says. "But several industry associations that represent investment advisors have actually endorsed the concept of user fees. They recognize that rogue advisor not only harms investors, but also leaves a stain on the advisory industry, so they support an increased regulatory presence and are willing to pay for it."

He points to the SEC's Investor Advisory Committee as endorsing the user fee last year.

"It's an idea that has support in the industry, especially among the larger advisors, but also from smaller advisors, as long as the fee is rational and proportionate," says **Paul Huey-Burns**, an attorney with **Shulman, Rogers, Gandal, Pordy & Ecker**. "Having a competently run examination program that can detect really bad acts helps the industry generally," he says.

But many advisory firms wouldn't welcome more SEC examinations, or added costs, says **David Hearth**, partner at **Paul Hastings**.

"I think there would be broad-based opposition to charging a fee," Hearth says. "Some will be opposed in principal to any increase in the cost of doing business, particularly if it means having the SEC in their offices more frequently for examinations."

He points to some segments of the industry with "razor-thin" margins, who might not welcome additional costs, and many who might not welcome additional regulatory scrutiny.

Enacting a user fee to ramp up exams would place a disproportionate burden on small advisory firms, which would not only have to contend with the fee, but would also have to allocate more resources toward dealing with more frequent examinations, says **Jonathan Uretsky**, an attorney and partner at **Phillipson & Uretsky**.

"In this environment, one way or another, we're going to have increased examinations," Uretsky says. "Sometimes the good intentions that people have in solving one problem lead to unintended consequences."

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