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July 1, 2009

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OFFICE OF THE SECRETARY

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20546-1090

RE: File Number S7-09-09, Custody of Funds or Securities by Investment Advisers
Comments by Otto & Associates, Inc., SEC File # 801-58024, CRD # 109493

Dear Ms. Murphy:

I am the owner and President of Otto & Associates, Inc., a fee-only RIA firm with under \$100 million in assets under management. We have been in business since 1991. I am writing to express my concerns with some proposed changes to the custody rule, which I believe are onerous to small advisors such as ourselves.

The rules about custody have always been somewhat perplexing. We were told that we have custody of our clients' assets according to SEC rules because we charge some of our clients' accounts for our management fee (I am also the trustee for one of my client's trusts), but the guidelines for reporting this have been unclear. We have always used independent qualified custodians to hold our clients' assets, primarily Charles Schwab & Company, Inc., and also TIAA-CREF, in large part because of the protections they give our clients. We always tell our clients how well protected they are by Schwab's (or TIAA-CREF's) policies and procedures. In the case of Schwab, for example, we tell them that Schwab will send them monthly statements that they can compare with our reports, that Schwab won't send money out of their account to anyone but them at their address of record, and also explain Schwab's procedures surrounding the charging of management fees.

Both of our qualified custodians send monthly or quarterly (Schwab sends monthly and TIAA-CREF sends quarterly) statements to our clients; Schwab gives our clients the option of viewing the statements on line; in that case, they receive an email to advise them that the statements are available. These statement copies are available to us through the custodians' secure advisor web sites. Schwab is very diligent about alerting us if a client's mail or email is returned, so we feel quite confident that our clients do, in fact, receive their statements. We discuss with clients that they should review their statements so that they feel comfortable that what we report to them about their accounts (through our portfolio management program, PortfolioCenter, via a daily download from Schwab) is correct. We are therefore quite comfortable with the proposed change that clients must be so advised in writing.

Although some of our clients prefer to write us a check, we deduct our quarterly fees directly from some of our clients' Schwab accounts. We always send our clients invoices that show how we calculated our fee before charging their account, and believe this disclosure is very important. (We do not charge our TIAA-CREF clients' accounts for our fees.)

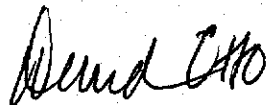
We are concerned with the proposed change requiring that advisors hire an independent public accountant to conduct a surprise examination solely because we debit fees directly from client accounts. We don't believe that such a change is necessary; the cost would be a huge burden to small advisors such as ourselves. We believe Schwab has many policies and procedures in place that protect our clients from any sort of theft from their accounts. They will not send money to anyone other than to the client at their address of record without their written consent. They send monthly statements as noted above and "freeze" accounts when the statements are undeliverable until the addresses are corrected (again, requiring the customer's signature). As for fees, Schwab will not charge accounts for amounts that they deem excessive. As Schwab does such a good job of protecting its clients (TIAA-CREF has similar protective policies and procedures), we believe that small advisors who use independent custodians such as Schwab or TIAA-CREF should be exempt from the surprise examination requirement, even if we have custody by virtue of debiting fees directly.

In summary, we ask that you consider these recommendations:

1. Clarify and separate the custody definition from the fee debit definition.
2. Exempt small advisors who use independent custodians from the surprise audit requirement, as the necessary client protection controls are already in place.
3. Establish client protection controls for advisors who debit fees from client accounts. Ensure the controls are simple, easily examined during an SEC inspection, and avoid unnecessary and costly annual surprise examinations by a CPA firm.

Thank you in advance for your consideration.

Sincerely yours,



David W. Otto, CFP®
President, Owner, and Chief Compliance Officer
Otto & Associates, Inc.