

July 23, 2009

To the Securities and Exchange Commission:

We are a registered investment advisor (RIA) in the State of New York (CRD # 111311) and anticipate registering with the Securities and Exchange Commission sometime within the next few years. Our President and Chief Investment Officer is Douglass C. Lyon, CFA (and a member of the CFA Institute) and our Chief Compliance Officer is Kate M. Lyon, CFP® (and a member of the Financial Planning Association or FPA).

We are writing to comment on and oppose the requirement in the proposed amendments to the custody rule (File Number S7-09-09) that would subject investment advisers to a surprise audit by an accounting firm.

The most glaring problem with the proposed rule is that, if enacted, the SEC would essentially be abdicating its responsibility to perform audits. The SEC is charged by law to complete such audits and not to pass them on to registrants. This rule, if enacted, would set a precedent for the SEC to evolve into an auditor of auditors.

We would also oppose the rule for the following additional reasons:

- A requirement for a surprise audit does not inure to the benefit of consumers because it would *add significant cost* to doing business that will ultimately have to be passed on, in part or in whole to the consumer in the form of a surcharge or higher fees. This would reduce consumers' long-term return on investment.
- The enactment of the proposed rule would take away valuable time needed to assist clients (consumers) during the ongoing financial crisis. This proposed rule would be burdensome, particularly for small independent investment advisors, because of the time involved to prepare for and respond to an additional audit.
- The proposed rule sets up a conflict of interest for the RIA because it asks the RIA to hire (compensate) its own auditor.
- The rule seems unnecessary given the fact that the Ponzi schemes recently uncovered by the SEC had nothing to do with fees automatically deducted by investment advisers.
- The SEC has not demonstrated there are systemic problems in the area of automatic-fee-deduction through third-party custodians. In fact the use of a third party custodian for fee deduction likely enhances consumer protection.
- The rule appears to be more of an over-reaction to the public criticism of the SEC and congressional pressure after the Madoff scandal than an effective regulatory response.

In order to enhance consumer protections we would respectfully suggest the SEC incorporate in its standard audits of RIAs a test or examination of the fee deduction processes rather than subject RIAs to a costly second audit by an outside firm. We would also suggest the SEC work to better enforce *existing* rules and regulations through the use

of well-trained, ethical and diligent examination staff that perform regular audits on high-risk advisors.

Thank you for your consideration of our comments.

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