

July 13, 2009

Gentlemen:

RE: Release No. IA-2876 File No. S7-09-09, Custody of Funds or Securities of Clients by Investment Advisers

My comments are based upon my experience as a professional investment advisor and on behalf of Pinnacle Investment Management Inc., a Registered Investment Advisor.

I commend the commission for their endeavor to protect the investing public.

I support the rule except where it appears that the proposed rules would impose significant costs without commensurate benefits: specifically I believe costs will outweigh benefits if an audit is required for advisors who bill clients accounts for fees while utilizing independent custodians.

Regulation is most appropriate when the benefit to society outweighs the cost paid by society for obtaining that benefit.

It does not appear that the Commission has fully considered the cost and benefits of requiring an audit for advisors who bill client account for fees while utilizing independent custodians to custody client assets. Many of those custodians have a review process in place for overseeing the billing process. While this is not an audit, it does add another layer of protection, and perhaps provides better protection since it is done contemporaneously compared to an audit which is done after the fact. In addition, these custodians send copies of statements to the clients at least quarterly, and usually monthly. The amount of the billing is relatively small in relationship to the value of the account (typically in the neighborhood of 0.25 percent of the account balance every three months). In addition this has not been an area of significant abuse by dishonest advisors. Thus, both for the public in general and specifically for clients of advisors who utilize independent custodians and bill accounts for fees, the potential benefit for requiring an audit is very small.

And the cost for this regulation would be very significant, especially for small independent advisors who use independent custodians but bill client accounts for fees. These are many of the advisors, who have been at the forefront of the movement to embrace a true fiduciary standard for all financial advisors and brokers.

Thus the benefits are small for that section of the proposed rule requiring an audit for advisors who bill client accounts for fees while utilizing independent. And the cost of the audit is high. Since the costs of that portion of the proposed regulation outweighs the benefit to society, the portion of the rule requiring an independent audit for advisors who utilize independent custodians but bill clients accounts for fees should not be adopted.

I do support the adoption of the remainder of the proposed rule.

Thank you for your consideration.

Very truly yours,

John W. Eckel CFP, CFA  
Pinnacle Investment management Inc.