Wedgewood Investors, Inc.
Investment Managers & Counsellors

100 State Street, Suite 506
Erie, Pennsylvania 16507-1457
814-456-3651, Fax 814-459-9343

July 8, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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Subject: Proposed Custody Rule (IA-2876).

Dear Ms. Murphy:

We are opposed to the proposed SEC rule that would require surprise audits of fees for all investment advisory firms who deduct their fees directly from client accounts. There are a host of reasons:

- For firms like ours who already undergo annual audits from outside CPA firms, the cost and activity are redundant.
- Merely auditing a fee won't achieve your purpose of transparency to the client of his/her costs and returns. The client has already signed authorizations, via funds for the brokeages or discretionary contracts and authorizations by third party custodians (e.g., Schwab) for the independent investment adviser.
- If it is beyond merely the deduction of the fee, namely transfers, withdrawals and other immediate needs for cash from client accounts, you will have to roll back to the client and the third party custodian responsibilities and electronic or paper authorizations only they can execute and not the adviser.
- Moreover, you will have to force advisers who have their own in-house brokers to discontinue this activity. This is too much temptation for some advisers, in spite of the economies of scale.
- You should also force advisers to use only certain software for return calculations. We use Advent's Ayxs and have double checked it numerous times and have not found errors. Many advisers use software that is far from rigorous in the calculation of investment returns. Madoff's screwy returns could have been picked up quickly by the correct software but his intent was to intervene and defraud. That's a different proactive issue than the majority of advisers you are addressing.
- In the end, the outside surprise audit won't achieve the end you want.

Last month we were asked to review several accounts (individuals and a profit sharing plan) for accuracy of returns, how much they were really paying for the management of the assets and the allocation of the assets. The accounts were managed and held at a large wire house. Not only were the costs never detailed to these folks (which included front loads, deferred fees, 12b-1's as well as the fund management fees) but the returns that were expressed to these folks were merely the published returns of the funds, independent of contributions, withdrawals or any other activities of the individuals. If you are interested in a clean audit trail of fees, there should be some uniformity of disclosure by brokers as well as advisers as to the amount accounts really pay for their management. This should apply to insurance products also: annuities are a nightmare in explaining what they really cost a person.

I wish you the best in creating transparency of costs for account holders. There are several avenues to achieve it but surprise audits is not one of them.

Sincerely,

Dennis R. Marin, CPA