July 22, 2009

The Securities and Exchange Commission

Washington D.C.

Dear Sir or Madam:

I am an independent Registered Investment Advisor (RIA) registered with the SEC. I am writing regarding file number 'File Number S7-09-09' which is the proposal to subject investment advisory firms to an annual surprise audit if they custody client assets. Incredibly, this would include those advisors, like myself, that really don't custody client assets, but hold them at independent custodians. However, if we deduct our fees from the clients' account, we are deemed to have custody, even though held at an independent custodian.

I am completely opposed to this proposal. Let me discuss a few reasons why.

- <u>It unfairly imposes excessive costs and administrative burden on advisors</u>. It is estimated that the costs of these audits could range from $8,000 to $20,000. In my case, I am a sole proprietor. Adding an additional level of costs of this magnitude would be a serious blow to my ability to manage expenses and still provide a high level of service to my clients. Almost all investment advisory firms are especially under pressure at present due to the poor stock market over the past year. This additional cost could either drive some out of the business, or be passed on as an additional cost to consumers.

- <u>This proposed rule makes no discrimination between firms that really do custody client assets, and those that don't</u>. I custody my clients' assets at an independent brokerage firm (Fidelity in my case), as do the large majority of RIA's. Therefore, I do not custody client assets. It is just that the SEC has taken a position that those who withdraw client fees from their portfolios are deemed to have custody. Even though we really don't. (Withdrawing fees from the portfolio is done at the client's request and as a convenience to them. Some elect to pay their fees by check.)
- <u>If there is a problem, it would be with investment advisors that also custody assets</u>. The problem with Bernie Madoff is that he custodied his client portfolios. If a rule is to be imposed, it needs to be aimed at the correct group, that is, those advisors that custody assets, not those that use independent custodians. It would not be right or fair to adopt a crude, all-encompassing mandate that doesn't even apply to most of those that it affects.
- <u>This rule doesn't solve the problem it was triggered by</u>. Bernie Madoff did not allow independent brokerage statements or any other statements to be issued other than the fraudulent ones he produced. His problem wasn't charging the wrong

amount for fees. His problem was making up fictitious balances! Auditing RIA's on their fee deductions won't prevent a Ponzi scheme fraud.

- <u>Use of an independent custodian already provides safety for clients and an independent check and balance</u>. For RIA's that use independent custodians such as Schwab, Fidelity, etc. an independent statement is generated every month. Clients can check their statements online 24/7. Every quarter I send my clients a statement showing what their fees are and how they were calculated. The client then can see that the fee was properly deducted from their account. CPA's receive brokerage statements and 1099's for taxes. They also verify the fees as they are typically tax-deductible. There are many checks and balances in place already. An extremely expensive annual audit would do *nothing* to enhance the safeguards already in place.
- <u>This regulation attempts to solve a problem that doesn't even exist!</u> There are no wide-spread cases of fraudulent fee deductions. This is not a problem. Part of the reason why not is the already existent checks and balances mentioned in the bullet point above. If an advisor wants to fraudulently enrich himself, he isn't going to do it by nickel and diming investment management fees. He would create a bigger scheme such as Madoff or Stanford did. The fee withdrawal problem is not an issue.

Thank you for your attention and interest to this matter. This proposed regulation would impose massive costs on the investment management community (at a time when advisors are under pressure anyway due to the lower stock market). And worst of all, it would not solve the problem it was intended to fix, and instead attempts to solve a problem that doesn't exist.

Thank you,

Richard Holbrook