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<ISSUE>CASE</ISSUE>

<RSP>Y</RSP>

<MSG>I am writing in response to proposed changes to the custody rules in Release No. IA-2876 File Number S7-09-09

I own and operate a firm that is a SEC registered RIA in Phoenix Arizona.

I have read the proposed rule changes to accounts the SEC considers discretionary and I am opposed to the requirement of surprise audits. I am concerned that the SEC considers advisors who have client permission to take advisory fees from the accounts as being discretionary and having custody. I believe the SEC is responding (or over-reacting) to cases like the Madof scandal in which there was not an independent custodian and independent reporting of asset values. For advisors who use independent custodians, such a rule would represent a significant burden and is an over-extension of the SEC's powers and authority that would gain nothing.

I would prefer to see rules passed and applied in situations where client funds are actually at risk. Such instances would be when there is not an independent custodian or the advisor had full discretion over client accounts. In those cases, an audit may be of some assistance in assuring that no fraud was occurring.

This requirement of an independent audit would place a tremendous hardship on small firms like mine. The estimated cost of an audit would hurt our ability to operate profitable without passing on the costs to our clients, who frankly are not at risk and would do not gain a material benefit from the audit or the rule. I understand the SEC and FINRA desire to be seen as aggressively cleaning up problems in the securities industry and restoring the public trust, but this over-reaction appears to be more for publicity and would do more harm than good.

I would strongly encourage you to re-consider this proposed rule and instead, promote additional funding for the SEC to beef up the audit and enforcement staff so that they can provide the real protections that are needed - and can apply the appropriate level of supervision in cases where it is mandated.

I appreciate the opportunity to make my comments regarding this proposal and ask that you strongly consider modifying it such that the enforcement is focused on cases that require the attention.

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