

July 24, 2009

Regarding: **File Number S7-09-09**

To whom it may concern:

Greetings. I am writing in response to the **SEC**'s proposed changes to the custody rule, **Release No. IA-2876**.

I am an **SEC** Registered Investment Advisor, a member of the **Financial** Planning Association (*FPA*), and a Certified Financial Planner™ registrant.

I wanted to take this opportunity to formally object to the proposed amendments to the custody rule that would subject investment advisers to a surprise audit by an accounting firm, solely because those advisers automatically deduct client fees from their investment accounts. If passed, this regulation would require surprise audits at approximately 11,000 **SEC** registered firms. *To my knowledge, this is an attempted fix to a non-existent problem, in that I am unaware of any RIA citations around the subject of inappropriate fee withdrawal from client accounts.*

I can understand the need for increased regulation in the financial services industry, but as a small business owner, the costs involved in implementing these surprise audits would be extremely costly and burdensome. Ultimately, these increased costs will end up being passed on to my clients, the very individuals this additional regulation is designed to help.

In my opinion, the surprise audit proposal appears to be more of a political reaction to the very public criticism of the **SEC** in the wake of the Madoff scandal, as compared to an effective and legitimate regulatory response.

The Madoff scandal and other Ponzi schemes that have happened could have been prevented with proper enforcement of current rules by the **SEC** and **FINRA**. In addition, repeated warnings from the media and whistle blowers should have been the impetus for both agencies to audit this firm. The **SEC** should have initiated more stringent action, as Madoff was registered with the **SEC** as an investment adviser for the past few years. However, **FINRA** (and its predecessor **NASD**) was the regulatory body in charge of reviewing Madoff's decades-old broker-dealer business, when some of this fraud most certainly occurred.

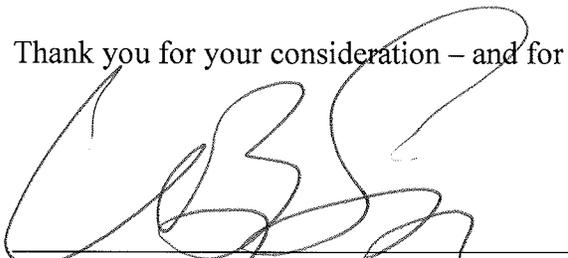
The **SEC** has already resolved one of the major problems with the custody rule, by eliminating a loophole from registration for certain accounting firms with the PCAOB that Madoff's accountant used to avoid detection of its phony auditing practices.

Most importantly, the Madoff scandal and other Ponzi schemes uncovered by the **SEC** had nothing to do with fees deducted by investment advisers, which is the purpose of the proposed surprise audits. As far as I am aware, there have been no systemic problems in this area, and the additional costs that will be borne by investment advisors and our clients is both unnecessary and burdensome. There have been no news reports of investment advisory firms stealing billions of dollars from clients via management fee deductions. Our client's assets are held at a third-party custodian, and the amount of the fees debited for our services are always clearly itemized on the client's monthly statements.

In the current climate this rule may force out the smaller firms that serve the lower net worth public just as they need help the most.

Madoff and others stole from clients by generating fictitious statements, not by debiting their investment advisory fees from client accounts. I think the most appropriate regulatory solution to enhance consumer protection would be for Congress to appropriate additional resources to the **SEC** to hire additional examination staff, so this additional staff can increase the regular audit cycle of investment advisors.

Thank you for your consideration – and for your support going forward.

A handwritten signature in black ink, appearing to read 'WBS', written over a horizontal line.

William B. Smith
WB Financial Group