

July 24, 2009

TO: Securities and Exchange Commission

RE: Proposed Rule Change

SUBJECT: File number S7-09-09

Dear Sir/Madam,

I wish to speak against the above referenced proposed rule change. I have been a participant in the financial services industry since 1971 and believe that such a change would have a harmful effect upon my business and the services that I provide to my clients.

As to the question of the activities of Misters Madhoff and Stanford, they both held custody over client assets and abused that trust. They did not allegedly steal billions from their clients in the form of charging fees; they stole by holding custody over the assets and putting out fictitious account statements. It seems to me that this is the focus of the problem and where regulatory attention should be directed; not on surprise audits for virtually the entire investment advisory industry.

Instead, I would recommend simply mandating all investment advisors to use independent custodians – such as Pershing, Schwab, Ameritrade, Fidelity, etc. – to report independently to their clients on a monthly basis the value of their accounts and the trades that have been made.

Besides, the amount of fees that can be charged to a client's account by an advisor is already limited by most custodians. Any exceptions must be reviewed by the custodian's compliance department and/or approved in writing by the client. Distributions not going into the client's checking account or to their home requires special approval.

Surprise audits of investment advisors will do little or nothing to solve the problem of custody that existed with Madhoff and Stanford. After all, both these firms were audited by the SEC and escaped detection until it was too late. Had there been a rule requiring a separation between custody and valuation and the ability to withdraw funds, these tragedies might not have happened. At the least the client would have been able to compare statements from the custodian against the information supplied to them by Madhoff and Stanford.

Thank you for considering my thoughts on this important matter.

Sincerely,

Philip E. Merchant, Pres.