Subject: File Number S7-0909

As a registered investment advisor (RIA), I would like to express my view of the proposed amendments to Rule 206(4)-2 (the “Custody Rule”), specifically the surprise audit requirement proposal.

What follows below the black line is a form letter I received from TD Ameritrade, as they are my primary custodian of my clients assets. While I agree with all they say, as a very small advisory firm (less than 5 million in assets), I also have a couple additional comments and questions.

I have followed, to the best of my ability, the scandals of the recent past. I understand that the recent problems arose because certain RIA's/brokers/custodians had direct access to client assets and used that access to defraud/embezzle assets. But did any of these scandals arise out of an investment advisor defrauding clients by taking significant sums out of their client's accounts via the fee collection process? I don't think so. As a result, and I think this is what TDAI is saying, it seem to be serious overkill to lump RIA's whose only connection to client assets is the fee collection process in with those custodians who have real, unfettered access to client assets.

In addition, and I don't know if this is a rule or merely an internal control at TDAI, but I get called if the amount of fees for a single account exceeds a certain percent. This can sometimes happen where a family has multiple tax-qualified accounts under my management and an additional non-tax-qualified account as well. In these cases, we (the client and I) have decided that it makes the most sense to deduct all fees from the non-tax qualified account on the chance that the fees will be deductible on the clients taxes. The point is, for those RIA's who are considered to be "custodians" solely because of their fee withdrawal authority, it seems an adequate control would be for the real custodian, such as TDAI, to implement some sort of "cap" on the amount of fees that can be deducted from an account at any one time - with the ability of the client to adjust the "cap" for such reasons as the one I've stated above.

While I strongly support the SEC’s efforts to further protect the investing public, I oppose the surprise audit proposal in the context of RIAs using independent qualified custodians for their clients’ assets or securities who are only deemed to have custody because they have fee withdrawal authority.

As required by current Custody Rule, the independent qualified custodian maintaining our clients’ accounts delivers account statements, on at least a quarterly basis, directly to our clients, identifying the amount of funds and securities at the end of the period as well as all activity in our clients’ accounts. As a result, our clients receive comprehensive account information directly from the qualified custodian and are able to monitor the activity in their accounts. These safekeeping measures provide our clients with the ability to sufficiently identify and detect erroneous or fraudulent transactions.

Although we are deemed to have custody because of our fee withdrawal authority, our clients’ assets are held at an independent custodian which is already subject to annual audit requirements performed by an independent public accountant. As a result, mandating surprise audits of firms like ours by an independent public accountant would provide little benefit to our clients, but the costs to RIAs like us would be substantial.

The financial constraints imposed by this proposal would leave us with three viable options: 1) pass on the cost in whole or in part to our clients in the form of higher advisory fees, 2) revamp our model to no longer deduct advisory fees from client accounts but instead require clients to pay our fees directly resulting in increased costs, operational inefficiencies and inconvenience to clients, or 3) absorb the excess costs which would put undue financial strain on our business. All of the above options threaten to divert resources and attention from other client focused activities.

I believe the surprise audit requirement for RIAs deemed to have custody of client assets solely because they have fee withdrawal authority would entail relatively high costs to the advisor community and relatively little benefit to investors, as such, I respectfully request that the surprise audit requirement for these

RIAs be withdrawn. Instead, I propose alternative measures to enhance investor protection such as the four-pronged recommendations made by TD AMERITRADE to the SEC:

(i) Require RIAs to give fee notifications to clients at or about the time fees are withdrawn from client accounts through independent custodians

(ii) Provide clear fee guidance as to the maximum permissible advisory fee rate that an RIA can deduct through independent custodians

(iii) Conduct more frequent inspections of RIAs, with more focus on custody matters

(iv) Require RIA chief compliance officers to conduct an annual custody review and related certification to the SEC

If the above or a similar approach is taken, I am also in agreement with TD AMERITRADE that the Custody Rule should be revised to eliminate the fee deduction authority test as a basis for establishing advisor custody. I thank you for the opportunity to comment on this matter.

Respectfully,

John M. Wynn

President

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