MCS Financial Advisors
Fee-Only Wealth Management

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-09-09
Custody of Funds or Securities of Clients by Investment Advisors

Dear Commissioners and SEC Division of Investment Management Director and Staff:

MCS Financial Advisors is an independent, fee-only investment adviser registered with the SEC. We provide our clients with fiduciary asset management advice, financial planning and family wealth counseling. Our practice was founded by Michael C. Stalker, CFA and member of the CFA Institute. James Tarvin and I are Certified Financial Planner® registrants and I am the Chief Compliance Officer. Both James and I are members of the National Association of Personal Financial Advisors (NAPFA) and the Financial Planning Association (FPA).

MCS Financial Advisors manages client portfolio assets that are held at an independent qualified custodian. We reconcile each account's securities and cash balances in our portfolio accounting system to the balances held at our custodian daily. Our clients can tie our portfolio statements directly to the statements they receive from their independent relationship with their custodian. We deduct our asset management fees directly from client accounts, an arrangement that benefits both our clients and our firm.

We support the already-submitted comments of both NAPFA and the FPA. Our response to the Commission's proposed changes in the custody rule as drafted in Release IA-2876 is limited to the proposal that would subject investment advisers to an annual surprise audit if they are **deemed** to have custody of client assets because they deduct asset management fees from client accounts.

Specifically, this response is in answer to two questions in Section II.A.1. of Release IA-2876 (pp 10-11), specifically:

1. Should we except from the surprise examination requirement advisers that have custody of client funds or securities solely as a result of their authority to withdraw advisory fees from client accounts?
2. Is this form of custody, which is common to advisers with discretionary authority, less likely to be subject to abuse?

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1. We believe that the Commission should continue excepting advisers that have custody of client funds or securities solely as a result of their authority to withdraw advisory fees from client accounts for the following reasons:
   - **The cost of the rule change would be excessive** – Changing the current rule would impose significant costs on investment advisers, especially smaller firms such as ours. Estimates of the cost of these audits run to $20,000: costs that would significantly impact our overhead. If our firm chose to stop deducting fees in order to avoid the rule's requirements, we would then be forced to institute costly new processes and administrative burdens in order to track and process client checks. Either way, this change would require a significant time commitment from our professionals, removing them from activities that increase value for our firm and our clients.
   - **It is detrimental to many of our clients** – Clients who are younger than 59 ½ years old and have their retirement assets managed would not be able to pay their advisory fees from the accounts that are managed, because the IRS would deem payment of fees from these accounts by check "distributions" subject to the 10% penalty (fee deductions are not considered distributions). Alternatively, these clients would have to pay their fees through after-tax cash flows, which they might have difficulty doing. In addition, all clients who do not already itemize deductions on their tax returns would also lose the tax benefits of automatic fee payment from qualified accounts.
   - **Costs will be passed on to clients** – Either the cost of the audit or the change in fee collection procedures would be passed on to clients in the form of higher fees.

2. We believe this potential form of abuse is not likely from advisers who use independent qualified custodians.
   - **Large, institutional custodians protect their clients.** Independent qualified custodians are just that: independent from the adviser and interested in protecting their clients. Our custodian already has safeguards in their management fee processing procedures to ensure that unusual or excessive fees are not being charged to client accounts.
   - **The proposal seeks to protect consumers from a problem that, to our knowledge, does not exist.** Fraud enabled by automatic fee payment arrangements is not, as far as we know, a significant or widespread problem.

Finally, we applaud the Commission's efforts to improve client protections by focusing on areas of risk. A ***better solution*** than surprise audits by public accounts would be to have independent custodians verify that adviser management fees align with the advisers' fee schedules. Moreover, this could be done at a fraction of the cost of the proposed rule.

Yours Truly,

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