July 28, 2009

To Whom It May Concern:

As a Certified Financial Planner(TM)practicing for over 25 years, I am at a loss to understand how surprise audits of advisers who **do not** have ***"physical"*** custody of clients' assets would have prevented the Madoff and any other Ponzi scandal. I strongly oppose the requirement in the Release No.IA-2876; File No.S7-09-09 that would require investment advisers to an annual surprise audit by an accounting firm.

Yes, I do have fees deducted from some clients' accounts by Schwab, a third party custodian (TPC). But that action clearly doesn't give me access to a client's assets beyond the value of my fee. Before my fee is deducted it has been approved by the client and very closely reviewed by Schwab. Even in the Form ADV, I believe it's Item 9 Part I, the SEC instructs the adviser to ***not*** check the "custody" box if they deduct fees. Clearly, the SEC doesn't think the adviser has custody just because they deduct fees.

Actions taken by the SEC and the Public Company Accounting Oversight Board (PCAOB) and Congress to strengthen audit requirements of all advisers that maintain ***"physical"*** custody of client assets certainly has gone a long way to close the loophole allowing Ponzi schemes to happen in the future.

Ponzi schemes happen because the criminal has the ability to move clients' assets around, much like anyone of us legally transfers money from our paycheck to our checking account to a credit card company to pay an invoice. Ponzi schemes don't happen because an adviser has gotten the client's approval to deduct a fee from the client's account that is custodied with a totally independent financial institution. I know that Schwab, and, I'm aware that other TPC's, review all "management fee" requests scrutinizing them to make sure that they meet a 3% limit of the client's assets per year. How many years does the SEC think it would take to use "management fee" requests to successfully execute a Ponzi fraud? Five, ten, fifteen years? **It's impossible to have fees deducted via a TPC arrangement turn into a Ponzi scheme!**

I send my client an invoice and then send that invoice to Schwab for payment. Schwab sends my client a monthly statement and when a fee is deducted Schwab clearly shows it in the statement as "Management Fee." I review my clients' portfolios and produce a report that shows fees deducted separate from any other withdrawals requested by the client. That adds up to at least three times the client is advised about the fee deduction, giving the client ample opportunity to compare what's been deducted with what the agreement is with the adviser.

This proposed action appears to me to be a response to the "political heat" generated by Madoff and the other criminals who were allowed to perpetrate heinous crimes on many good and trusting people. What is needed is to enforce the laws that are already in place and do it effectively and efficiently. And, when a "whistle-blower" continually contacts the Commission about suspected wrong-doing the SEC should take the time to listen and *thoroughly* investigate the claims. I don't mean to put the entire blame on the Commission, no doubt, FINRA was responsible for the Madoff scandal and should be held equally responsible.

Finally, I know that this administration is eager to find ways for the individual consumer/investor to have a much easier time in getting the best financial planning and investment guidance that is possible. I and my most of my colleagues, the Certified Financial Planners(TM) that make up the financial planning profession have continued to behave in a manner that puts the client's interests first -- we are fiduciaries and behave as such. This regulation will put a huge financial burden on financial planning and investment advisers, especially those with smaller practices causing them to either pass the cost on to their clients or stop practicing. Either way, that means that the many individuals the Administration is trying to help will no longer have high quality, unbiased financial planning and investment advice available to them.

The estimates that I have heard are considerably greater than the Commission is using -- easily 2 1/5 to 3 times greater than the $8,100. When one talks to an accountant about what is involved, clearly it's much more than what the SEC has considered when estimating the cost.

I hope that I have been able to raise issues that the Commission will seriously consider. And that the decision by the Commission will be to **not** require advisers who have their fees deducted from clients' accounts to have annual surprise audits.

If you wish to discuss any of the above, please don't hesitate to call me. Thank you.

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