Citrin Cooperman & Company, LLP

CERTIFIED PUBLIC ACCOUNTANTS

July 28, 2009

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

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

Dear Ms. Murphy:

We are pleased to submit these comments in response to your Proposed Rule published referenced above.

We understand that the Commission recognizes the need to take additional steps to protect the investing public in light of scandals that have arisen in the last year. In general we support the Commission's efforts. We ask that the following two comments be considered to enable a practical implementation of the Commission's proposals that will not adversely affect smaller businesses that could be affected, and to require oversight that is more closely aligned with risk.

We have these two comments on which we respectfully request your consideration of:

Surprise examinations

Your question on page 10: "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 clients?"

You have described in footnote 18 circumstances in which Advisers registered with the Commission can have authority to deduct advisory fees from client assets but that do not otherwise have custody of client funds or securities.

It is our view that having access to customer funds or securities solely to withdraw funds or securities should not subject an Adviser to surprise examinations.

We believe that subjecting these Advisers to surprise examinations has these weaknesses:

1) The surprise inspection can easily miss that day or days when the withdrawal of advisory fees will occur, for deduction will occur, and are therefore likely to miss the transactions critical moment that such inspections are intended to capture.

2) Those Advisers that are introducing their customers to third party custodians or brokers that carry these accounts may be asked to bear an undue burden when complying with this rule. The mailing of statements directly to customers, disclosing all transactions, is a control in and of itself.
3) Lastly, the proposal in this instance places an undue burden on the Advisers who have this limited access to customer accounts.

We believe that surprise inspections will not address failings that have been uncovered in recent high profile cases, such as in the case of Bernard Madoff Investment Services, Inc. ("Madoff"). Reports in the media indicate that Madoff served as both the adviser and the broker-dealer that carried the accounts of its customers. The apparent lack of separation enabled Madoff to send statements to its customers that were, according to media reports, false.

Surprise examination and PCAOB Registration

Your question on page 25: "Should we ...require surprise examinations under the rule be conducted by independent public accountants registered with, and subject to regular inspection by, the PCAOB?

We do not agree that independent public accountants performing surprise examinations should be limited to those firms that are subject to regular inspection by PCAOB.

We note that there are a number of registered broker dealers that might be included in the "surprise examination" proposal. We believe that the requirements for firms who audit the financial statements of registered broker-dealers should be consistent with the rule as to who is eligible to perform surprise examinations. We believe that the regulatory authorities have thus far considered risk in their determination of who may audit broker-dealers and further believe that the same considerations should be applied to the question of who should be permitted to perform surprise examinations. There are auditors who are registered with PCAOB to audit broker-dealers pursuant to the Sarbanes Oxley Act of 2002 who are presently not subject to PCAOB inspection. Requiring surprise examinations to be performed by auditors already subject to regular PCAOB inspection should only be required for those Advisers whose activities present a higher level of risk. For example, an Adviser who performs the dual role of carrying a customer account and who has custody of customer assets, as in Madoff, would present an illustration of a higher level of risk.

Once again, we thank you and the Commission for your consideration and the opportunity to present our comments.

Respectfully submitted,

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