

My name is Kim Nourie and I am a member of the FPA of San Antonio and South Texas. Additionally, I am an IAR of an SEC-registered investment adviser. I am highly OPPOSED TO recently proposed legislation with a requirement for federally registered investment advisers to be subjected to an annual surprise audit of all discretionary accounts of an investment adviser by an independent public accountant. My understanding is that the SEC estimates the average cost of these audits at \$8,100 per firm. Such costs would necessitate an increase in fees to my clients which would not bode well with them especially when my firm custodies client assets at independent third party custodians.

My concerns are as follows:

1. The proposed surprise audit appears to be more of a political reaction to public criticism of the SEC and congressional pressure after the Madoff scandal than an effective regulatory response.
2. The SEC already resolved one of the major problems with the custody rule, which was eliminating a loophole from registration for certain accounting firms with the PCAOB that Madoff's accountant used to avoid detection of its phony auditing practices.
3. Madoff's scheme & other Ponzi schemes seem to have resulted from a lack of aggressive enforcement by the SEC and FINRA of current rules and ignoring repeated warnings from the media and whistle blowers. The SEC should hold FINRA accountable for its shared oversight of Bernie Madoff in conducting the Ponzi scheme for decades as a broker-dealer before registering two years ago as an investment adviser.
4. I am not aware of any abuse in the deduction of fees relating to the Ponzi schemes uncovered by the SEC. Fees are clearly delineated on independent custodial statements AND in many cases outside CPAs/accountants are preparing tax returns for clients and they offer an opportunity for an independent person to see the reasonableness of investment management fees. As far as I am aware, there have been no systemic problems in this area and it appears ludicrous to institute unnecessary, costly and burdensome audits, particularly for small, independent investment advisers. Perhaps you would consider red flags to be sent by custodians for any fees being deducted which exceed certain percentages.
5. The new surprise audit requirement will add substantial additional costs to my business that will ultimately be passed on to my clients. The significant costs of such audits will end up necessitating fee increases to clients – the very people the legislation is designed to “protect.” Additionally, I am not a large institutional advisor and my time spent with auditors will be time not spent with my clients and based on the past year, clients easily would have suffered emotional distress if told that I was in the middle of a surprise audit and would not be able to meet with them for a number of days/weeks. Additionally, time spent with auditors is taking time away from the investment management activities associated with my clients accounts. So in a nutshell, my clients would end up with less of my time and have to pay a higher cost for it just for me to tread water in this industry.
6. In order to enhance consumer protection, I would support Congress appropriating additional resources to the SEC to hire and train additional examination staff to increase the regular audit cycle of investment advisers.

No doubt, we mutually agree that the evil actions of few have substantially damaged the reputations of the SEC and investment advisers, but it is important that prior to any legislation passing we truly examine the root cause of the problems and the laws already on the books. If enforcement is the issue, then let's improve enforcement. Let's not create unnecessary burdens

for the profession and implement laws that treat symptoms while ignoring root causes. Additionally, let's focus time and effort where the largest magnitude of fraud might occur – the small independent advisors don't seem to be the biggest issue. Might the old 80/20 rule come into place – quite likely 80% of the RIA business is tied to 20% of the advisors registered with the SEC. Isn't that where the highest and largest potential for abuse will occur?

I appreciate your willingness to receive feedback.

Regards,  
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