

Securities and Exchange Commission
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Chris Barnard

31 May 2011

- **17 CFR Part 275**
- **File No. S7-17-11**
- **Investment Adviser Performance Compensation**

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rule: Investment Adviser Performance Compensation.

You intend to issue an order that would adjust two dollar amount tests in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance based compensation to “qualified clients”. The adjustments would revise the dollar amount tests to account for the effects of inflation. You are also proposing to amend the rule to: provide that the SEC will issue an order every five years adjusting for inflation the dollar amount tests; exclude the value of a person’s primary residence from the test of whether a person has sufficient net worth to be considered a “qualified client”; and add certain transition provisions to the rule.

I would generally support the proposals, as a minimum, which codify changes required under Dodd-Frank. I also support your additional proposed amendment, which would exclude the value of a natural person’s primary residence and the amount of debt secured by the property that is no greater than the property’s current market value.¹ If the primary residence is underwater, then the excess debt should be considered a liability and thus deducted from the net worth of the natural person and his or her spouse, if any.

¹ I agree with your argument that: “The value of a person’s residence may have little relevance to an individual’s financial experience and ability to bear the risks of performance fee arrangements, and therefore little relevance to the individual’s need for the Act’s protections from performance fee arrangements”.

Please note that the comments expressed herein are solely my personal views

I also agree with your proposed transition provisions. These are sufficient and complete and will certainly minimise any disruption in implementing the proposed rules.

However, I would hope that the philosophy behind these rules could be revised at the earliest opportunity, so that they would represent a more principles-based approach going forward, and better reflect modern markets and more complex investment products. I would then recommend that such revised standard on “qualified clients” should include a minimum standard of required investment expertise and knowledge, rather than just monetary limits.

In response to your specific requests for comment I would add the following:

P.9. I agree that the rule should establish the dollar amount tests adopted in 1998 as the baseline for all future adjustments, as a consistent denominator for all future calculations. This would be more accurate. Given that the Dodd-Frank Act requires that revised thresholds be rounded to the nearest \$100,000, the establishment of new baselines at the rounded amounts, each time the thresholds are adjusted, would result in some underestimation or overestimation of the effects of inflation in subsequent periods.

P.13. I am not convinced that the rule should provide that the calculation of net worth must be made on a specified date prior to the day the advisory contract is entered into. I agree that some investors might be likely to inflate their net worth by borrowing against their homes to attain qualified client status, but such people will always be able to find a way around the rules. Any investor who is prepared to borrow money in order to be able to pay an investment adviser performance based compensation is probably qualified enough to pay such compensation.

Yours faithfully

Chris Barnard