

To: U.S. Securities & Exchange Commission

Re: **Comments Regarding Proposed “Safeguarding Rule”**

Further reference to the Safeguarding Rule’s proposed requirement for discretionary trading authority to trigger the burdens of “custody”

Quoting the SEC’s proposed “Safeguarding Rule”: “The safeguarding rule would also explicitly include an adviser’s discretionary authority to trade client assets within the definition of custody.”

Summary response:

We strongly oppose this clause and encourage the SEC to remove the clause/requirement quoted above. It would place undue and totally unnecessary burdens on Registered Investment Advisors (“RIA’s”). All of our clients’ assets are held by qualified custodians. The authority to trade on a discretionary basis in no way subjects client funds to misappropriation in the way third-party disbursement authority does. Furthermore, as investment advisors, we are fiduciaries under existing law and bound to act in the best interest of our clients. In our opinion, the custody rules rightly apply to situations where potential misappropriation or theft of client funds is present.

The potential risks covered by the existing “custody” rule are simply not present solely due to having discretionary trading authority!

“Custody” rules relate explicitly to access to client funds, misappropriation of client funds and so on. Protecting investment clients from trading risks falls under the existing purview of fiduciary rules, rules related to prudence, and other existing laws. Furthermore, RIA’s who employ Chartered Financial Analyst (CFA) charterholders to manage client portfolio are subject to additional ethical standards imposed by the CFA Institute.

The Safeguarding Rule clause quoted above accomplishes nothing new, yet imposes significant burdens on RIA’s.

Suggested Path Forward:

The SEC should remove the entire clause quoted above from the Safeguarding Rule. Alternatively, since the discretionary trading trigger appears to relate exclusively to the trading of digital currency (so-called, non-DVP trades), the SEC could add a carve-out which exempts those with discretionary trading authority who do not own digital currency in client portfolios (ie, exempt from the custody rule those RIA’s who only participate in traditional “DVP” trading).

Sample Revised Clause:

“The safeguarding rule would also explicitly include an adviser’s discretionary authority to trade client assets within the definition of custody, only if the adviser buys, sells or otherwise transacts in any form of digital currency in client portfolios (or non-DVP trades).”