

INVESTMENT ADVISOR

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To: Security and Exchange Commission

In Re: Proposed New Custody Rule Requirements for Registered Investment Advisors

File No.: S7-09-09; IA-28-76

I write as Compliance Officer of a federally registered Investment Advisor firm, Gardner Russo & Gardner, of Lancaster, Pennsylvania. I speak in opposition to including, within the new regulation's oversight provisions, firms whose only disclosure of custody has to do with direct debit of client accounts for advisory fees.

It seems to me that the biggest danger of fraud on the part of an IA firm stems from its having a "closed circle" of influence consisting of discretionary investing for, custodial control over, and reporting on, client assets. If a discretionary Advisor formally custodies client assets or custodies through a fully-owned or closely-affiliated entity, there is limitless potential for fraud covering all the current bad-boy scenarios – Ponzi schemes, misappropriation, misrepresentation of investment, outright theft. Firms that encompass functions of investing-custody-reporting under one umbrella should be looked at very closely on a regular basis, with the burden of proof of clean living resting on the Advisor. Examiners should probe deeply into the interstices between the three functions – that is where the dark things lurk.

Bring on the surprise audits.

Included in this high-risk group should be hedge funds that may not have custody, but that do not certify that custody is held by named, reputable, established, independent custodians. (On the other hand, hedge funds that use such custodians and employ independent auditors should not be included.)

Over and above the oversight the proposed regulations would provide, the best thing regulators can do is continuously educate the investing public on the need to be informed and most of all, skeptical about advisor practices. In a free society, the consumer must take responsibility for protecting his own best interests. But the world of financial services is complicated and often arcane. We all look askance at warnings about spilling hot coffee in one's lap, but cautionary warnings about various types of investing are self-evidently helpful and clearly appropriate to help the consumer help himself. **And make the print and words bold, loud, and attention-grabbing.**

My objection to the new requirements as proposed is thus:

Firms that have custody only in sense of directly debiting fees from client accounts should be held to a stringently high level of transparency that includes written client instructions to debit, presentation of fee calculations, a period of delay between client receipt of invoice copies and actual debit to allow for client questions, and confirmation of debit on independent custodian statements. To take these steps means an Advisor fulfills the spirit of compliance by making this process fully transparent and orderly. However, covering debit-only firms in the same proposed regulatory overlay as the closed-circle firms described above, is downright silly and burdensome in the extreme.

Generals and, I would add, regulators, are always fighting the last war, and wrong-sighted as this may be in the case of generals, it is appropriate that regulators fix black holes of lax supervision that allowed, and could allow again, public-damaging misbehavior. However, to fix these holes by shoveling

in the macadam and then creating whole new mounds of greasy black sludge on top of them is dangerously self-defeating, because.....

The cost imposed by over-regulation to address past misdeeds is the attention that is diverted from contemplation of what scheme or plot will next confront the investing public. It will by definition be something unforeseen.....but there will be something, and the SEC must be poised to catch wind of it sooner rather than later. The SEC has better things to do with its time than review and oversee hundreds of accountant reports pertaining, and pertaining only, to direct-debit firms.

Thank you for consideration of my points.

A handwritten signature in cursive script that reads "Anne D. Gardner". The signature is written in black ink and is positioned above the typed name.

Anne D. Gardner
Chief Compliance Officer
Gardner Russo & Gardner