July 6, 2009

To The Securities and Exchange Commission:

Concerning IA-2876, I would request that the Commission take into account the following considerations before proceeding with the proposed rules for investment advisers.

I would request that the Commission reconsider the proposed rule that would require an investment adviser that is deemed to have custody of client funds solely as a result of their authority to withdrawal advisory fees from client accounts to undergo an annual surprise examination. My opposition to this proposal is grounded in the fact that if a qualified custodian provides clients with a quarterly statement that contains all account activity and advisory fee deductions, adding an annual surprise examination will provide no benefit to the client. It is reasonable to expect that clients will review statements furnished to them by qualified custodians, and thus will have an understanding of account transactions and advisory fee deductions. The expectation that clients will review custodian statements is as valid as any expectation that clients will review adviser disclosures and disclosures associated with prospectuses and marketing materials. In addition, any expenses generated as a result of surprise examinations will most likely be passed on to clients in the form of higher fees. If a firm is expected to absorb additional compliance expenses to safeguard client assets, this money would be better spent addressing greater risks than those in which a qualified custodian has already been in place to mitigate.

I would also request that the Commission reconsider any rule that would require a chief compliance officer to submit a certification that all client assets are properly protected and accounted for. A certification with this amount of certainty does not prove to be realistic. Instead, I would suggest a chief compliance officer be limited to a certification based on an element of reasonability, with the underlying basis of support coming from reasonably designed policies and procedures, and/or testing that reasonably confirms client assets are properly protected and accounted for. Since firms are required to have compliance programs that encompass policies and procedures as well as testing of those policies and procedures, this process would align with activities that firms are already undertaking. Furthermore, audit programs test a percent of a population of accounts, and any opinion rendered as a result of an audit is based upon an extrapolation of results generated by that test sample. No opinion is given after testing all accounts.

I would also like to suggest to the Commission that any proposed rule be examined for the impact it would have on small firms.

With respect,

Mark Wayton
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