June 25, 2009

I am writing to state my objection to the proposed SEC ruling which would change the definition of Advisors with Custody to include those Advisors who are only deemed to have custody because they are able to deduct fees directly from the client accounts.

I am member of a small firm of 4 advisors and 2 officer personnel. We do not hold our clients assets, but rather use a third party custodian. Each client is given full disclosure of our fees, how we charge them and what percent they are specifically being charged, in our Investment Advisory Contract. Those fees are also disclosed on our Form ADV Part II which each client receives. We are given a limited Power of Attorney authorizing us to make trades on our client's behalf. The client retains full authority over his account and receives a statement each quarter. Fees deducted are clearly shown on the statement and each client agrees to have us deduct fees directly from their account. The custodian, client and my firm each retain copies of the contract.

To require all small investment companies to pay for surprise audits would be a financial burden that most companies, including us, are not set up to handle. This proposal seems to be addressing the wrong people who are not really at the heart of all the scandal and corruption to date. This proposal cannot be productive for the SEC's staff that is already over burdened in time and cases as it now stands. The high cost of these audits would simply wind up being passed on to the client who will be the one penalized by the system that is trying to protect them. I agree with others who have suggested that those who debit accounts in excess of 2% should be required to have surprise audits.

Certainly there needs to be some review of advisors who DO custody client assets, however, to penalize small advisors who do NOT take custody of client funds but only take their fees through their custodian would be unfair. We are a highly regulated industry subject to stringent compliance rules. Each firm is required to define their risk areas, and bring their firms into compliance. Perhaps it would be more productive to address those firms who have a high risk assessment and concentrate more effort into regulating their activities rather than lump everyone into the same category.

Thank you for considering my objection.