

DATE: July 27, 2009

SUBJ: Response to Proposal S7-09-09

Dear Sir or Madam,

Please let me first introduce myself. I am a member of the National Association of Active Investment Managers, a State-registered investment advisor and most importantly of all, **a small business owner**.

The Securities and Exchange Commission recently proposed a controversial new requirement for registered investment advisers that would mandate an annual surprise audit, by an independent public accountant, of all discretionary accounts of an investment adviser. Why? Because advisors who automatically deduct client fees are considered to have "custody" of client assets. This action seems to be coming in response to the Bernard Madoff scandal in which the SEC "dropped the ball" numerous times.

The Securities and Exchange Commission estimates the average fee of these audits at \$8,100 per firm and internal costs of administering it of \$1,256 for a total of \$9,356. The Financial Planning Association estimates the costs will be between \$10,000 and \$20,000 per year.

I am strongly opposed to this specific requirement in the rule, and offer the following comments.

1. The requirement of surprise audits for advisors who have "custody" solely because they deduct client fees from an independent custodian flies in the face of over 35 years of SEC rulemaking.
2. The requirement punishes those advisors who use **independent, non-related** custodians.
3. The SEC should require independent custodians to solve the problem. This would effectively deal with the problem at a minimal or low cost to all.
4. The SEC's proposal will not solve the identified problem.
5. For assets that are custodied at a non-related, independent third-party custodian the problem will not exist.
6. The SEC says the reason for the audit is to get "a second pair of eyes" on the lookout for fraud. But we already have two sets of eyes: the client's and

the custodian's. Besides, any fraud will show up during an SEC or State audit of advisors.

7. Despite the fact that there is no documented fraud relating to advisor's deduction of fees from an account held with an independent custodian, the Commission is proposing passing on over \$55 million in audit costs to these advisors and their clients.

8. The audits may require correspondence more than **8 million advisor clients** every year.

9. The proposed rule appears to be more of a political reaction to public criticism of and congressional pressure on the SEC than an effective regulatory response. (This in response to the Madoff scandal.)

10. The Madoff scandal and other Ponzi schemes resulted from a lack of aggressive enforcement of existing rules promulgated by the SEC and FINRA. More rules will not solve this problem. More effective enforcement of existing rules will.

11. The Ponzi schemes uncovered by the SEC had nothing to do with fees deducted by investment advisers. As far as we are aware, there have been no systemic problems in this area and changes are unnecessary, costly and burdensome, particularly for small, independent investment advisers.

12. The new surprise audit requirement will add **additional costs to my business that will ultimately be passed on to my clients.**

13. In order to enhance consumer protection, I support Congress appropriating additional resources to the SEC to hire and train additional examination staff to increase the regular audit cycle of investment advisers.

Thank you for your hearing my concerns about this onerous proposal.

Sincerely,

Steven D. Landis, CFP® Practitioner
Sojourn Financial Strategies, LLC