July 27, 2009

Subject: File Number S7-0909

As a registered investment advisor (RIA) with Financial Management Concepts, Inc., I would like to express my view of the proposed amendments to Rule 206(4)-2 (the "Custody Rule"), specifically the surprise audit requirement proposal.

While I strongly support the SEC's efforts to further protect the investing public, I oppose the surprise audit proposal in the context of RIAs using independent qualified custodians for their clients' assets or securities who are only deemed to have custody because they have fee withdrawal authority.

As required by current Custody Rule, the independent qualified custodian maintaining our clients' accounts delivers account statements, on at least a quarterly basis, directly to our clients, identifying the amount of funds and securities at the end of the period as well as all activity in our clients' accounts. As a result, our clients receive comprehensive account information directly from the qualified custodian and are able to monitor the activity in their accounts. These safekeeping measures provide our clients with the ability to sufficiently identify and detect erroneous or fraudulent transactions.

Although we are about to be deemed to have custody because of our fee withdrawal authority, our clients' assets are held at an independent custodian who is already subject to annual audit requirements performed by an independent public accountant. As a result, mandating surprise audits of firms like ours by an independent public accountant would provide absolutely **NO** benefit to our clients, and the costs to RIAs like us would be substantial.

The financial constraints imposed by this proposal would leave us with three viable options: 1) pass on the cost in whole or in part to our clients in the form of higher advisory fees, 2) revamp our model to no longer deduct advisory fees from client accounts but instead require clients to pay our fees directly resulting in increased costs, operational inefficiencies and inconvenience to clients, or 3) absorb the excess costs which would put undue financial strain on our business. All of the above options threaten to divert resources and attention from other client focused activities.

I respectfully request that the surprise audit requirement for these RIAs be withdrawn.

The custodian already reports to clients what occurs in accounts. That is where changes should be made to increase investor protection.

I propose alternative measure to enhance investor protection by enforcing changes at the Custodian level:

(i) Require Custodians, who already have it documented on their new account forms, to bold the text concerning authorizing advisor fee deductions

drawing attention to the fact the authorization is made and that the RIA is able to withdraw fees at their discretion.

(ii) Require Custodians to report any fee deductions the next business day, similar to the report they make as they would with a trade confirmation. Do not allow the time frame to be lengthened to the end of a period – month or quarter.

I concede that RIAs could be more proactive in the disclosure process with new clients. I propose the following measures to also enhance investor protection:

(i) Require RIAs to give fee notifications to clients within 15 business days from the time fees are withdrawn from client accounts through independent custodians. This is weeks ahead of when their custodian sends out monthly/quarterly statements as of now.

(ii) Require RIAs to highlight in their engagement documents, as well as the ADV-II, fee disclosures that explain in fine detail their fees, their billing/deduction process, and expected billing amounts with language to be approved by SEC.

If the above or a similar approach is taken the Custody Rule should be revised to eliminate the fee deduction authority test as a basis for establishing advisor custody.

I thank you for the opportunity to comment on this matter.

Respectfully,

Brian P. Terry
Vice President & Chief Compliance Officer
Financial Management Concepts, Inc.