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Adrian Day

ADRIAN DAY ASSET MANAGEMENT

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July 28th, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File number S7-09-09

Dear Ms. Murphy:

I am writing to comment on your proposal for surprise independent audits of Registered Investment Advisors.

It is typical of government, because of their own failures, to impose new regulations on everyone. Again, as with the TSA and the airlines, typical for government, you like to make mandates but force others to pay. I realize that it is probably beyond the ability of the SEC's expertise to detect fraud, but to require RIAs, many of whom are small independent firms, to pay for surprise audits is just one more burden of minimal value. Surprise visits by Madoff's auditor would not have stopped *that* fraud, would they? And while you are able to miss a blatant fraud on a massive scale over a number of years, you are nonetheless busy nitpicking honest advisors (including dictating the size of the type and the use of tenses).

Specifically, I object to your proposal to include firms (for the requirement for surprise audits) that are deemed to have custody solely because they can assess fees directly from client accounts (with client's approval and other safeguards). Where there are *separate* accounts held by at an *independent* custodian, the opportunity for fraud is rather remote.

--These firms should be excluded from the requirement for annual surprise audits.

--Failing that, the scope of the surprise audit for such firms should be limited to a review of fee assessments.

Sincerely,

Adrian Day
President
AD/ka

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