From: Gunther [redacted]
Sent: Thursday, May 14, 2009 9:48 PM
To: Schapiro, Mary L.
Subject: Investment Adviser Custodial proposal - Comment

TO: Chairman Mary Schapiro
From: Gunther Karger
May 15, 2009

RE: Investment Adviser Custodial proposal - Comment

Too often, the goal is to "harvest" funds and assets rather than to manage" investments and the temptation to use "accessible" funds can be too great to resist especially during crisis periods such as we are experiencing. Therefore, I like your basic plan to require funds be placed into a third party custodial account subject to audits.

However, we need to be cautious about placing excessive burdens on advisers. This could lead to excessive number of registered advisers to "deregister" and harvest investment funds under the pretext of offering premium returns and flexibility. A system with higher operating costs could lead to such exodus and an increase in "unregistered" advisers operating under exemptions and finding creative ways to increase the number of clients under exempt management. This could potentially be done by creating multiple sub accounts each set with a maximum number of investors just under the threshold requiring "registration". The analogy to this is the "going dark' process now being recommended by securities attorneys to smaller public companies needing to reduce costs and achieve greater flexibility to do whatever they wish under the SEC radar.

Just a 'side bar" comment.

Respectfully,
Gunther