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SEC CONTACTING ADVISER CLIENTS TO CONFIRM ACCOUNT BALANCES

Washington, DC – March 10, 2009: Gene Gohlke, Associate Director of the SEC’s Office of Compliance Inspections and Examinations (OCIE), has written a letter to the Investment Adviser Association to inform investment advisers of a new examination practice in which the SEC has been verifying the existence of client assets managed by the adviser it is examining.

“The SEC is taking a number of proactive steps to address issues arising from the Madoff fraud,” said IAA Executive Director David Tittsworth. “Contacting clients and other third parties to verify account balance information is an additional check that can be used in routine examinations to detect potentially fraudulent activities. We are pleased that the SEC has informed us so that advisers and their clients do not misconstrue this new examination practice.”

OCIE’s letter states that, “in order to perform a valid verification of assets, the staff must request independent confirmation of investor assets from various third-parties,” including clients, derivative counterparties, hedge fund investors, custodians, DTCC, and auditors. In these requests, exam staff will seek confirmation of cash and securities held by a sample of advisory clients as of a specific date and confirmation of transactions in such accounts over a period of time. Exam staff will ask clients to confirm that their account balances as of a specific date were consistent with their own records and that the contributions and withdrawals from their account were authorized.

Importantly, OCIE’s letter to IAA states that these requests should not be considered as an indication by the SEC that any violations have occurred and should not reflect adversely on the adviser. Exam staff’s letter to clients seeking account confirmation will also “make clear that the request should not be construed as a reflection on the adviser or that any violation of the law has occurred.” OCIE also re-affirms that both its examinations and its communications with clients and other third parties during exams are non-public.

Tittsworth noted that the SEC is taking other actions to deal with the repercussions of the Madoff case, including conducting targeted examinations that focus on self-custody practices of certain dually registered firms, and preparing a rulemaking that will address self-custody and other issues. The IAA sent a letter to SEC Chairman Mary Schapiro on March 6 setting forth various recommendations for the anticipated rulemaking

The Investment Adviser Association is a not-for-profit organization that represents the investment advisory profession. Founded in 1937, its membership consists of SEC-registered investment adviser firms that collectively manage assets for a wide variety of individual and institutional investors. For more information, please visit www.investmentadviser.org.

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