Dorian Eason Asset Management, LLC

6800 Poplar Avenue Suite 125 Memphis, Tennessee 38138
Telephone (901) 755-2075 Fax (901) 755-0565

Tom Dorian, CFA
Principal

Elizabeth M. Murphy, Secretary
U. S. Securities & Exchange Commission
100 F Street NE
Washington DC 20549
Via Electronic Attachment

RE: File No. S7-09-09, Proposed Rule on Custody of Funds or Securities of Clients by Investment Advisers

June 11, 2009

To The Commission:

The past twelve months have borne out many fears expressed by independent investment advisers regarding the unprofessional and illegal practices of certain financial providers. Specifically, providers who have taken custody of their clients' assets without the most basic proper safeguards have fraudulently misappropriated those assets. In our market in metropolitan Memphis, we have seen much heartache, anger, and fear as a result of the frauds perpetrated by both the Madoff and the Stanford organizations.

The knowledge of these and other frauds and ponzi schemes across the country certainly engenders the need for a fresh look at the custody rules which apply to all investment advisers. We applaud the Commission's efforts to promulgate effective rules, and to vigorously enforce those rules to protect the assets of RIA clients, and to protect the reputation and standing of the entire industry.

The Proposed Rule, however, takes a completely unnecessary step by requiring annual surprise audits for every RIA which is deemed to take custody of client assets by virtue of the fee collection practice of deducting fees directly from client accounts at Custodians. This is a standard industry practice and a key component of the business models of most independent RIA's. The requirement of a surprise audit to address a problem which does not exist appears to us to be far overstepping the bounds of good regulatory practice. I am not aware of any headline cases calling for regulatory action because of improper fee collection activities, and footnote 11 of the Commission's release #25356 makes no such references. On the contrary, the Commission should be redoubling its efforts to focus on the real threats of fraud, theft, and malfeasance related to clients' assets implied by the problems associated with private funds, limited partnerships, and other true asset custody issues.

In our business model, every client signs an investment advisory agreement in which the client's fees are spelled out, on both an annual and a quarterly basis. Fees are calculated based on the market value of assets each quarter. The advisory agreement stipulates that fees will be deducted from the client's custodial account after the end of each calendar quarter. Clients have the option to be billed for their services if they desire to do so. Additionally, the client must stipulate in writing to the Custodian of their assets that we, as investment adviser, are allowed to deduct fees directly from the custodial account. The client also separately authorizes us, as investment adviser, to have discretionary trading authority over the client's assets. The client retains all authority to direct the Custodian in any and all other money and asset transfers. The fee deduction is shown on each client's Custodial statement, and our records of fee calculations and entries are retained as part of the books and records of our firm, subject to client inquiries, internal testing and external audit.

If the Commission would require annual surprise audits for implementation of fee collections, why would you not also require annual surprise audits for trading authorizations? For that matter, why would there not be a requirement for annual surprise audits for any number of other good and effective rules in place at the Commission? No, this would be a self-defeating regulatory nightmare for each and every independent RIA, as well as for the Commission and the independent parties who would have to be hired and paid to perform these audits. To go down a rulemaking path like this would surely stifle the investment advisory industry with requirements which would be prohibitively expensive to meet.

Instead, the Commission must meet a reasonableness test and a cost-effectiveness test for its rules, including this Custody rule. The current requirements seem more than sufficient to meet the needs of clients regarding the collection of fees which are contractually agreed to by clients, specifically authorized by clients, and reported to clients by their independent Custodians. If the current rules are breached by any investment adviser, that adviser should be reprimanded under the Commission's existing guidelines. There is no need to impose a new rule to affect fee collections of every single investment adviser when this has never been an area of significant violation in the independent RIA community. As I tell my children, the Principal should not make the entire student body stay after school because of the blatant disregard for the rules by a single student. In this case, there does not even seem to be precedent that rules regarding fee collections have been broken.

We are a small firm. We work hard to maintain the highest ethical standards. We strive to achieve the best compliance program we possibly can. We have built our business model around providing and living up to the highest level of client confidence in our firm and in the role of each client's individual Custodian. The requirement of an annual surprise audit set forth in the proposed rule on custody of clients funds, as it applies to the collection of fees from client accounts, will result in a direct and immediate cut in income. Outside of lease payments and salaries, the expenses associated with this proposed regulation would immediately become our firm's highest single annual expense, according to the Commission's cost analysis. The benefit to our clients would be essentially zero.

We strongly encourage the Commission to fully retain the exception for client-authorized, Custodian-directed fee collections already in place under Rule 206(4)-2, as it is reiterated in the first part of footnote 18 of the Commission's release #25356.

Respectfully submitted,

Tom Dorian
Chief Compliance Officer
Dorian Eason Asset Management, LLC