STERLING
CAPITAL MANAGEMENT LLC

July 21, 2009

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

Re: Proposed Custody Rule Amendments
File No. S7-09-09

Dear Ms. Murphy:

Sterling Capital Management appreciates the opportunity to comment on the SEC's proposed amendments to the custody rule (Rule 206(4)-2 of the Investment Advisers Act). We support the objectives of these proposed changes, but we do have concerns about some aspects of the surprise audit requirement.

We understand the proposed amendments to include:

- All advisers deemed to have custody of client assets must undergo an annual surprise audit to verify the assets. This requirement would now apply regardless of the reason the adviser is deemed to have custody (e.g. deemed to have custody solely due to the adviser's ability to withdraw advisory fees from clients' custodial accounts).

- Advisers that serve as a qualified custodian or have a related entity serving as a custodian must obtain a "control report" by an independent CPA firm.

- Advisers that send quarterly statements to their clients are required to have a reasonable basis after due inquiry for believing that the qualified custodian is sending quarterly statements.

Sterling supports the requirement for third-party surprise audits for advisers that self-custody client assets. We also agree that advisers should have a reasonable belief the custodian is sending statements to the client. As an aside, we also support the announced intent of the SEC's examination staff to contact the adviser's clients to confirm custodial balances in the course of examinations of advisers.

However, we are concerned that the surprise audit requirement will be applied too broadly, specifically to advisers who only are deemed to have custody due to their ability to deduct advisory fees, to advisers who are under common control with an entity that has actual custody of client assets (e.g. a bank or broker-dealer), and to advisers to pooled investment vehicles that are audited annually. In each of these cases, we believe that surprise audits will not significantly reduce the risk of fraud or misappropriation when the adviser has little or no access to the assets in the custodial account.

Ability to deduct fees

We believe the risk to clients of this limited ability is adequately covered when there is an independent custodian; a copy of each invoice is sent to the client; and the client requests that the fees be deducted.

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Related entities with custody

Under the proposal, it appears that an adviser which is under common control with another entity that serves as a custodian for certain clients of the adviser would be subject to the surprise audit requirement. We strongly believe this unnecessarily extends the scope of the rule. As an example, an independently-managed adviser may be wholly or partially owned by a bank holding company that also owns a bank and a broker-dealer. Certain clients of the adviser may designate that bank as the custodian. This is a client decision that the adviser does not control. The custodian is independent – the adviser has no more ability to access the custodial account than for a non-affiliated custodian. The adviser continues to execute its reconciliation procedures and confirm that the custodian is sending statements to the client – these protective procedures apply to all the adviser's clients. The existing requirements more than adequately cover this risk. The proposal may be of some benefit when the adviser actually controls the custodian.

Advisers to pooled investment vehicles

Under the proposal, an adviser to a pooled investment vehicle that is audited by an independent CPA would also be required to undergo a surprise audit. We believe pooled investment vehicles that have an independent custodian and an annual audit are adequately protected by these measures, and an additional surprise audit would be of little if any benefit.

Finally, we believe the estimate of $8,100 as the typical cost of a surprise audit dramatically underestimates the actual fees that will be charged by a CPA firm. We have not obtained formal proposals, but based on informal conversations believe the cost would be at least 3 to 5 times this figure.

Thank you for the opportunity to comment on the proposed amendments to the custody rule.

Sincerely,

Kenneth R. Cotner

Kenneth R. Cotner
Executive Director and Chief Operating Officer

cc: E. Brea; A. McAlister; M. Montgomery; B. Walton