WARSHAW BURSTEIN COHEN SCHLESINGER & KUH, LLP
555 FIFTH AVENUE • NEW YORK, N.Y. 10017
TELEPHONE: (212) 984-7700
FACSIMILE: (212) 972-9150
WWW.WBCSK.COM

JANET R. MURTHA
PARTNER
ATTORNEY DIRECT DIAL: 212-984-7731
EMAIL: JMURTHA@wbcsk.com

July 24, 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:

We are writing to comment on the recently proposed rule "Custody of Funds or Securities of Clients by Investment Advisers" [Release No. IA-2876; File No. S7-09-09]. We are a law firm whose clients include investment advisers. While we agree that safeguarding investors' assets is important, we believe that the proposed rule, in its current form, is overly broad.

You request comment as to whether or not advisers that have custody of client funds or securities solely as a result of their authority to have fees deducted from client accounts should be exempted from the proposed surprise examination requirements. We believe such advisers should be exempted from these requirements. In these circumstances, a qualified custodian, rather than the adviser, has actual custody. The custodian typically will check the computation of the fee prior to deducting it from an individual client's account. Further, the client is able to verify the fee deduction when he receives his account statement. As a result, where the qualified custodian is independent from the adviser, this form of custody by an adviser does not lend itself to the same potential for abuse as traditional direct custody by an adviser and, to our knowledge, it has not been the subject of abuse. We believe the costs of subjecting advisors who have this limited form of deemed custody to the proposed surprise examination requirement outweigh any minimal deterrent effects the application of the rule would have.

You also request comment as to whether advisers should be excepted from the surprise examination requirement with respect to client assets held in pooled investment vehicles that are audited at least annually. We believe they should be. The majority of pooled investment vehicles provide investors audited financial statements each year.

This audit process serves to provide a check against fraudulent activities by the advisers of these pools. While the audit process may not be identical to the proposed surprise examination process, it is nonetheless a tested and accepted verification process. A surprise examination of the assets held in pools that are audited annually by an independent auditor would be a duplicative process, the expense of which would ultimately be borne by the investors in the investment vehicle.

We also note that Section (b)(3)(i) of the proposed rule would require a pooled investment vehicle to distribute audited financial statements to its investors within 120 days of the end of its fiscal year. This is a departure from the analogous current Section (b)(3), which adds "or in the case of a fund of funds within 180 days of the end of its fiscal year end." We believe that the 180 day time frame for funds of funds should be incorporated into the current rule. A fund of funds is itself an investor in multiple pooled investment vehicles that provide their audited financial statements within 120 days of their fiscal year end. The audited financial statements of the underlying funds are integral to the preparation of the audited financial statements of a fund of funds. As a result, funds of funds need to be provided with additional time to distribute their audited financial statements so they can rely on the rule.

In conclusion, we feel that the proposed rule, as it relates to the surprise examination requirements, is overly broad and that the costs of applying it to all assets of all registered advisers outweigh any potential benefit.

We appreciate your consideration of our comments. If you would like to discuss any of our comments further, please feel free to contact Janet R. Murtha at (212) 984-7731.

Sincerely,

Warshaw Burstein Cohen Schlesinger & Kuh, LLP

By: ______________________
Janet R. Murtha

JRM/fml