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July 27, 2009

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

By e-mail: rule-comments@sec.gov

Re: Proposed Rule – Custody of Funds or Securities of Clients by Investment Advisers (Release No. IA-2876; File No. S7-09-09)

Dear Ms. Murphy:

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned proposed rule.

The NYSSCPA's SEC Practice Committee and Investment Companies Committee deliberated the proposed rule and prepared the attached comments. If you would like additional discussion with us, please contact Anthony S. Chan, Chair of the SEC Practice Committee at (212) 331-7653, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

David J. Moynihan
President

Attachment

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NEW YORK STATE SOCIETY OF

CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON

PROPOSED RULE – CUSTODY OF FUNDS OR SECURITIES OF CLIENTS BY INVESTMENT ADVISERS

(RELEASE No. IA-2876; FILE No. S7-09-09)

July 27, 2009

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Robert E. Sohr

From the Investment Companies Committee:

Peter L. Berlant

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New York State Society of Certified Public Accountants

Comments on

Proposed Rule – Custody of Funds or Securities of Clients by Investment Advisers (Release No. IA-2876; File No. S7-09-09)

The New York State Society of Certified Public Accountants welcomes the opportunity to comment on the Proposed Rule – Custody of Funds or Securities of Clients by Investment Advisers (Proposed Rule) and applauds the Commission's efforts in promoting safeguards against fraud.

On balance, we support the Proposed Rule given the benefits of an annual surprise examination and believe that such examinations should be conducted by a PCAOB registered firm. The scope of the examination should include privately offered securities and agree that material discrepancies, if any, should be promptly reported to the Commission. However, we question the practicality of meeting the notification requirement of "within one business day" and believe the Commission should provide guidance on those instances that would meet the "material discrepancies" definition.

While we recognize the need in the present environment for increased regulatory oversight, we are not convinced that the existing regulatory framework, if properly followed, would not have detected the recent cases of misappropriations. Properly performed audits of broker-dealer financial statements filed on Form X-17 A-5, coupled with the independent auditor's evaluation of the broker-dealer's internal controls (which includes quarterly securities examinations, counts, verifications, and comparisons), should provide adequate protection for customers. Nevertheless, we support the Commission's proposed rulemaking as a reasoned approach to improving investor protection in light of recent events.

We are particularly concerned when custody of client securities or funds is directly or indirectly held by a "related person." We note that the Commission is requesting comments in Section IIB4 of the release on whether an independent qualified custodian should be required to hold client assets. We agree that this would mitigate the increased risks from using a "related person" as a custodian. However, we do not believe that this alternative should be adopted. There may very well be valid business reasons for using a "related person" as a custodian, and adequate internal controls could be implemented to protect an adviser's customers and investors. We do agree that the Commission's proposal for an annual surprise examination to verify client funds and securities is particularly beneficial when a "related person" custodian is used. In addition, and as discussed below, we believe that imposing requirements for specific internal controls, including minimum education and experience requirements for those charged with compliance responsibility and minimum staffing levels to provide adequate segregation of duties, would result in effectively barring unqualified custodians from the marketplace due to the associated cost of compliance.

To supplement the annual surprise examination of client assets, it is critical that management be required to strengthen its control environment and compliance culture. In that regard, we believe investment advisers should be required to (a) maintain an effective system of internal control, (b) develop formal compliance policies and procedures, (c) test its effectiveness in safeguarding the clients' assets, and (d) certify their compliance with such policies and procedures. To ensure consistent application of this requirement, investment advisers should be required to evaluate their effectiveness in addressing the control objectives that are listed on page 23 of the Proposed Rule in Section IIB2.