To: Securities and Exchange Commission
From: American Superior Company
Date: July 27, 2009

Via E-Mail to: rule-comments@sec.gov

Re: **File No. S7-09-09**
Comments on Proposed Rule # IA-2876

We have operated an investment advisory business for twenty-five years with assets up to $50M and continuous SEC registration.

Like many of our business peers, we use *unaffiliated, independent, national "qualified custodians"* [such as Schwab, Fidelity, insurance companies] for client assets. We eschew physical custody of client assets.

Our clients appreciate this arrangement … they feel secure with the independent reports they get directly from unaffiliated custodians. They can cross-check all asset flow and transaction events between these two information sources.

In the quarter century our firm has worked within the advisor regulatory framework, we've seen some convoluted interpretations of the word "custody" come into usage … and sometimes out of usage.

One illustrative example is the old SEC rule that an advisor could not for one second be in possession of a client deposit check [even if drawn in the name of an unaffiliated custodian]. A sensible modification of that rule later recognized that as long as an advisor forwarded any deposit check to the custodian or back to the client expeditiously, there was no "custody" occurrence.

"Custody" definitions should always reflect that sensibility. But parts of Rule Proposal #IA-2876 do not. To see what actions should NOT be considered "custody", consider the following investment advisor activity scenarios.

Many advisors provide the following services because clients ask for them and find them very helpful …

1) Deducting advisory service fees from designated client accounts based on disclosed fee schedules with at least quarterly, independent reporting of those fees by both the unaffiliated custodian and the advisor.

2) Transferring assets between *client-designated* accounts under *written standing orders* for such purposes as fulfilling periodic Trust income distributions, making gift transfers of assets to children, or satisfying IRA minimum required distributions. These transfers are again *independently* reported to the client by both the unaffiliated custodian and the advisor within the reporting period of occurrence.

3) Supervising client assets in 401K , 403B, 529 Plan and similar accounts that are captive at an employer-designated or government-designated unaffiliated qualified custodian using *written standing authorization* that allows access to the accounts via the internet. Once again, the client receives independent notification of all actions taken in those accounts from both the unaffiliated custodian and the advisor in a timely manner.

History suggests the public has been well protected from advisor chicanery when the activities (1) through (3) above are performed in the presence of these three conditions…

a) A qualified custodian UNAFFILIATED with the advisor is involved.

b) Statements listing ALL asset flows and transactions are reported by the unaffiliated qualified custodian DIRECTLY to the account owner at least on a calendar-quarter basis.

c) Written client authorizations and standing orders are in place which identify permitted asset flows between designated accounts; and *written notification* is promptly sent DIRECTLY to clients by the qualified custodian when any changes to client account information, client authorizations, or standing orders are initiated.

In our experience, very little client benefit is added by requiring surprise audits as suggested in Proposed Rule IA-2876 at an annual cost about $100 million [SEC estimate] at advisory firms that only perform the NON-physical-custody activities (1) through (3) above when the conditions (a) through (c) above are in effect.

Client asset security will not be improved by punishing all upstanding advisors with the cost of surprise audits … any more than lowering the pay of all dedicated SEC staff would improve the chance of finding the next Madoff in the making.

Thank you for your consideration. We hope the SEC and its staff agree with our perspective that *virtually all* the thousands of registered investment advisors work in an honorable and open fashion for the benefit of their clients. Advisors abhor the actions of a very few criminals who infiltrate their ranks and prey on clients. Despite the headlines and political pressures that one fraud like Madoff's instigates, the record of virtually all registered investment advisors as trustworthy fiduciaries holds up to scrutiny.

Cordially yours,

Alan J. Liebman
President
American Superior Company