Cohen Fund Audit Services

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July 21, 2009

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

Re: File Number S7-09-09
Proposed Amendments to Rule 206(4)-2

Dear Ms. Murphy:

Cohen Fund Audit Services Ltd. appreciates the opportunity to express its views with the Securities and Exchange Commission's ("Commission") proposed amendments to Rule 206(4)-2 of the Investment Advisers Act of 1940 through this request for comments.

Cohen Fund Audit Services Ltd. provides audit and attest services for many clients in the investment industry and specifically to registered investment advisers (RIA), pooled investment vehicles and mutual funds.

As it relates to the definition of custody and those who would meet that definition only by virtue of deducting advisory fees from client accounts, we believe that the rule is too broad as it is proposed and requiring a surprise exam on these RIAs would be an undue financial hardship with little direct or indirect benefit to clients. Advisory fees deducted from client accounts are authorized in writing by agreement between the RIA and client. In addition, in many cases, the fees are deducted from the client account by the Qualified Custodian (QC) in accordance with the agreement and then sent to the RIA. This arrangement provides that the RIA does not have actual control of direct deduction of fees from client accounts which, should mitigate the risks of discretionary withdrawal of fees from accounts.

Further, we believe the amendments should focus more specifically in areas where risks have already been identified which include custody of pooled investment vehicles such as partnerships or Fund of Funds. To that end, we believe the amendments need to clarify how the surprise exams address a client's investment in such vehicles vs. an examination of the underlying assets and investments of the particular pooled investment vehicle and how far that extends in the case of a Fund of Funds.

That said, we understand the Commission's interest in further protecting client assets with these proposed rule amendments and, assuming the Commission puts amendments to Rule 206(4)-2 in place, we would further like to see the proposed amendments change as follows:

- **Include thresholds/minimums to the scope of the Rule amendments–**
  We believe that instituting surprise exams on every RIA regardless of size or types of investments handled for clients places undue burdens on smaller RIAs.

- **Modify the amendments that require surprise exam of 100% of specific investments/securities –**
  We believe that a surprise exam of 100% of ALL securities is unnecessary given the current rule, the use of the QC, and other mitigating controls at the QC for various investments and securities. Having 100% testing on certain investment may make sense as they relate to securities of a particular type that the Commission may be concerned about, such as privately-held securities or alternative investments that may not actually be held by the QC. For the remaining securities, a sample approach could be used for confirmation/observation of the physical securities along with a sample approach to the confirmations sent to clients.

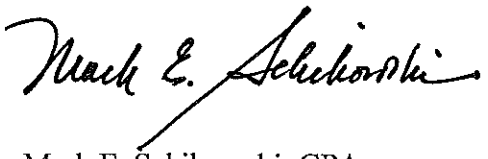
- **Clarify definition of "material discrepancy" –**
  We believe a more specific definition and guidance should be added to the amendment to clarify what actually constitutes a "material discrepancy". This would provide the users of the results of the surprise exams with specific context for such term.

- **PCAOB registered firms to conduct surprise audits/SAS 70s –**
  Given the nature of the objectives of these amendments by the Commission, we believe firms registered with the PCAOB are best equipped to provide these services due to their experience with the capital markets by their continual strict adherence to PCAOB standards and the centralized registration and oversight that the PCAOB provides subject to their inspection.

- **Clarify the logistical process of the surprise exams for the RIAs –**
  Undoubtedly, RIAs subject to the ultimate amendment by the Commission will have logistical issues pertaining to the performance of these surprise exams and their impact on day-to-day business of servicing clients. We believe more specific information regarding the notice period required by the independent accounting firm to give to the RIAs to conduct the surprise exams, as well as required timing/nature for confirming client accounts (including the use of negative response confirmation of client accounts) in conjunction with the exam, would alleviate some uncertainty with the RIAs concerning the interruption to ongoing business activities of the RIAs.

In summary, we believe that advisers who have the authority to disburse funds for approved fees from client accounts should not be subjected to the amendments contemplated under the proposed rules for custody and surprise exams and that the amendments be more specific as it relates to the identified risks of custody within the pooled investment vehicle area. We further hope the Commission will consider other enhancements/clarifications discussed above to make the ultimate amendments consistent with a proper cost/benefit to the end users.

Very truly yours



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