FIRST
MANHATTAN
CO.

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July 28, 2009

Via Electronic Mail: rule-comment@sec.gov

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

Re: Proposed Amendments to Rule 206(4)-2 ("Proposed Custody Rule")
Release No. IA-2876
File No. S7-09-09

Dear Ms. Murphy:

First Manhattan Co. ("FMC"), a dual registrant with the United States Securities and Exchange Commission (the "Commission") as a broker-dealer and an investment adviser, appreciates the opportunity to comment on the Commission's Proposed Custody Rule. The signatories to this letter have responsibility for the accounting, legal, operations and compliance functions of FMC.

Rebuilding investor confidence in both the financial system and in the professionals who serve the public is critical to the successful functioning of the markets. We support the Commission's efforts to develop rule proposals designed to restore such confidence. However, we strongly believe that any changes to existing rules be tempered by a full assessment of the related risks, and that any such changes be tailored to minimize the risks that are identified.

We support the concept that registered investment advisers ("advisers") who either 1) self-custody client assets or 2) maintain custody of client assets at an affiliated entity, be subject to enhanced regulations. Requiring that such advisers 1) be subject to an annual audit by an independent public accounting firm, 2) obtain a "SAS 70" type report from an accounting firm registered with the Public Company Accounting and Oversight Board, and 3) be subject to a verification audit of custodied assets, is a reasonable approach to addressing the increased risks to the public caused by such custody arrangements.

Under existing Commission rules and regulations, advisers such as FMC are deemed to have custody of client assets solely because they have the authority to deduct advisory fees by debiting client accounts. Subjecting such advisers to all of the rules, current and proposed, applicable to advisers who self-custody client assets is not warranted. As noted in the Proposed Custody Rule, the Commission believes that regulatory changes are required in order to address major investment scams. To our knowledge, no such scam was attributable to an adviser having the ability to debit investment advisory fees directly to client accounts.

As required by current Rule 206(4)-2, the independent qualified custodian(s) maintaining custody of our clients' accounts deliver(s) account statements directly to clients, identifying the amount of funds and securities at the end of each period as well as all activity in the accounts. As a result, our clients receive comprehensive account information directly from the qualified independent custodian(s) and are thus able to monitor the activity in their accounts, including, as appropriate, the debits related to investment advisory fees.

The proposed requirement that an adviser undergo a surprise examination if the adviser is deemed to have custody of client assets solely because advisory fees are debited to the client account is an unnecessary addition to the existing regulatory requirements. Such an examination, which, among other requirements, entails verifying the client's assets, does not mitigate the risks that might result from the debiting of investment advisory fees.

We strongly believe that it is critical to continue to allow advisers to debit investment advisory fees directly to client accounts without subjecting such firms to a surprise examination requirement. Consistent with many other advisors, we have developed systems and processes designed around the ability to debit such fees. The Proposed Custody Rule would effectively require advisers such as FMC to choose one of two objectionable alternatives: 1) discontinue direct debits of advisory fees, which would require developing new billing systems and processes, or 2) undergo a surprise examination. Either alternative would result in unnecessary additional costs and a negligible, if any, increase in investor protection.

We support the existing rule which exempts private investment vehicles from certain requirements of the custody rule if the investors in such vehicles receive audited financial statements within 120 days of the vehicle's year end. This rule has functioned well and we see no need to change it, provided that the assets of the private investment vehicle are maintained with an independent qualified custodian. Again, while we support the Commission's desire to prevent future investment scams, the existing rule with respect to such vehicles has adequately addressed the potential risks.

Importantly, we strongly believe that the cost estimate of $8,100 per year for an annual surprise examination by an independent public accounting firm is significantly understated. The minimum requirements of a surprise examination mandate that the independent accountant performing such examination:

1) Confirm all cash and securities held, and reconcile such cash and securities between the records of the custodian and the adviser,
2) Examine all transactions since the last examination and confirm with clients all cash and securities being held, and
3) Confirm with clients (on a test basis), accounts and securities/funds that have been returned since the last examination.

Such examination must be conducted in accordance with United States Generally Accepted Auditing Standards, and the Commission specifically notes that sampling with respect to requirements 1) and 2) above is not deemed sufficient. For a firm such as FMC, with approximately $10 billion of Assets Under Management at June 30, 2009 maintained primarily in thousands of individually managed accounts, we believe the cost of such an annual surprise examination would be a multiple of the amount estimated by the Commission. The incremental value to the individual client and/or investor would be negligible, if any. Again, as noted above, such costs would ultimately be borne by individual clients and/or investors.

Under the Proposed Custody Rule, each of the private investment vehicles we advise would also be subject to a surprise examination, in addition to the annual examination of their financial statements. Again, we believe the imposition of such a requirement would increase the costs to be incurred by each investment vehicle (with the costs ultimately being borne by the investors in such vehicle), while providing negligible, if any, incremental protection for the investors.

The Commission also requested comments as to whether Rule 206(4)-7 should be amended to 1) require that an adviser's Chief Compliance Officer submit a certification to the Commission that all client assets are properly protected and accounted for, and 2) impose certain minimum required procedures with respect to safekeeping of client assets. We believe that such amendments are unnecessary. The existing requirements for each adviser's Compliance Program, as well as the comprehensive annual testing of such an adviser's Compliance Program required under the current regulatory framework, are sufficient to address the risks in this area.

We thank the Commission for the opportunity to comment.

Very truly yours,

Cheryl M. Kallem
Senior Managing Director

Neal K. Stearns
Senior Managing Director