

HOWLAND CAPITAL MANAGEMENT

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Private Investment Advisors

Sent via Electronic Filing

July 24, 2009

Elizabeth M. Murphy, Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609
rule-comments@sec.gov



Re: Release No. IA-2876
File No. S7-09-09

Dear Ms. Murphy;

I am writing as the Chief Compliance Office for Howland Capital Management, a registered investment adviser. The firm acts as a fiduciary primarily to individuals and families who hold their assets in trusts. As a result, we often serve as trustees and are subject to numerous reporting and filing requirements to beneficiaries, tax authorities and probate courts. We are a smaller firm with assets under management (AUM) of approximately \$700 million on behalf of 300 clients. The firm was founded in 1967 and has served as a global custodian for our clients since its founding. Our custody role is a record keeping one. We hold all our clients' assets in an omnibus account at a qualified custodian and maintain a trust accounting system to provide the necessary record keeping and reconciliation functions. We operate this omnibus model with an independent qualified custodian to efficiently address the needs of our clients, but also to facilitate the various regulatory and legal compliance issues that face our firm. Examples of the benefits of this model are:

- **Efficiency of operation:** it allows for us to consolidate orders on behalf of our clients so that they benefit from *best execution and lower trading costs*. It also significantly simplifies the settlement process where we do not have to settle a trade with multiple custodians.
- **Privacy Issues:** since we provide the record keeping for our clients, it eliminates having to share their confidential information with any outside third parties and allows us to abide by the increasingly stringent privacy regulations.
- **Quality Control:** since the record keeping function is provided by HCM, we are able to *respond more quickly* to client requests and control the quality of the service. Many of our clients come to us because they are tired of having to deal with multiple entities in the management of their affairs who are not providing personalized service. This is of particular importance with our tax reporting function and all that the Internal Revenue Service demands from our firm.
- **Alternative investments:** given that approximately 5% of our assets are invested in Alternative Investments, we are subject to stringent *partnership accounting and tax reporting rules* that are much more easily addressed by our present custody arrangement.

In fact, new regulations would preclude our ability to offer the diversification that these investments give our client portfolios and have us run afoul of the representations and warranties we have given our general partners.

- **Cost-benefit:** using the omnibus model, we are able to *avoid having to charge our clients a separate custody fee* as the economies of scale offered by this model are significant.
- **Qualified Custodian:** there continues to be ongoing changes among the limited number of qualified custodians who provide individual account recordkeeping. Mergers have narrowed the choices to a handful and the advisor who relies on these remaining vendors has little control of the quality and level of service. As an example State Street Bank, arguably one of the largest custodians in the industry, has been de-emphasizing separate account record keeping and we continue to hear of high dissatisfaction with their offering from their clients. Although a number of new firms have started offering this separate account record keeping service, e.g. Fidelity and Schwab at no charge, we believe that this is a violation of the soft dollar regulations because this service is being paid for by commissions from the trades that they execute through their broker dealer. If an account they provide custody for requires trust accounting record keeping (i.e. separate tracking of income and principal) they charge 6 basis points for this additional service and no longer allow for any private investments that face valuation issues.

You requested that we quantify the potential cost to us and our clients if the custody rule was changed to require that all clients receive their statements directly from a qualified custodian. Based on our current asset size, and using a 6 basis point custody fee (which is the going rate that custodians are charging to provide the portfolio accounting), the incremental cost would be over \$400,000. Importantly this cost does not reflect the hidden costs that would be incurred by us having to reconcile to multiple custodians and accounts and the associated increase in errors and expense associated with resolving these errors. Given these sizeable increases in both hard and soft dollar expenses, we would be forced to recapture a portion of these charges by raising our fees.

We appreciate the recent events that have resulted in a review of the existing custody rule and would support a number of the proposed changes. Specifically, we think that all assets should be held at an independent qualified custodian not an affiliated custodian. **The important distinction we highlight is that making it a requirement that the qualified custodian be independent in conjunction with the requirement that the advisor be subject to an annual surprise audit would significantly reduce the possibility that an advisor could embezzle client funds without being detected and yet preserve a method of operating that has served our clients well.** We support the proposal to require that the surprise audit should be completed by a PCOAB certified accounting firm. An additional change that you might consider is requiring that advisers change their accounting firms after a given number of years. This is a requirement in the public accounting world and we believe it would encourage a fresh look at an investment advisors custody practices.

We would request that in changing the rule that consideration be given to those RIAs who have chosen to take on the burden of individual account record keeping to provide our clients with a higher quality, personalized and accurate service. We believe the proposal to require that statements be sent directly from a qualified custodian are not in the best interest of our clients and unfairly penalize firms like ourselves who provide these services with integrity and in a cost savings manner that meets all of the various regulations we face. It seems that this change is being contemplated only in reaction to the recent events where a limited number of unethical and crooked advisors have taken advantage of their roles as trusted advisors to their clients.

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We appreciate your soliciting consideration of our position in developing a workable solution to changes being proposed to the custody rules. If you should have any questions, please don't hesitate to contact us.

Very truly yours,

Weston Howland III

Weston Howland III, CFA

President