

April 19, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Supplement to Petition for Rulemaking; Custody Rule 206(4)(2); File No. 4-767

Dear Ms. Countryman:

I wish to supplement the petition for rulemaking that I filed dated November 9, 2020. Among other things, in my petition, I urge the Securities and Exchange Commission (the “SEC” or the “Commission”) to amend Rule 206(4)-2 (the Custody Rule) under the Investment Advisers Act of 1940 (the “Advisors Act”) to require that each investment adviser use a custodian that is not affiliated with that adviser.

In a similar context, the Commission has adopted independence requirements to protect customers’ assets. As you know, Rule 15c3-3 under the Securities Exchange Act of 1934 (the Exchange Act) requires broker-dealers holding customers’ securities or funds to establish a special reserve bank account. That rule requires most broker-dealers to deposit on a weekly basis funds equal to the net amount they owe to their customers in accordance with the rule’s formula. Of particular interest is subsection (e)(5) of that rule, which provides:

In determining whether a broker or dealer maintains the minimum deposits required under this section, the broker or dealer must exclude the total amount of any cash deposited with an affiliated bank. The broker or dealer also must exclude cash deposited with a non-affiliated bank to the extent that the amount of the deposit exceeds 15% of the bank's equity capital as reported by the bank in its most recent Call Report or any successor form the bank is required to file by its appropriate Federal banking agency (as defined by section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

In other words, Rule 15c3-3 does not give the broker-dealer any credit for a deposit at a bank with which it is affiliated or at a non-affiliated bank that is very dependent on that broker-dealer’s deposits.

Similarly, Rule 18a-1(c)(1)(ix)(C) under the Exchange Act permits a security-based swap dealer to hold initial margin at a third-party custodian meeting certain requirements, without incurring a charge against capital. The effect of this rule is to afford customers of security-based swap dealers

an enhanced level of protection by allowing the security-based swap dealer to use an independent custodian.

These two rules demonstrate that customers of broker-dealers and security-based swap dealers enjoy a greater level of protection than that available to customers of investment advisers. Customers of investment advisers should not have protection of their assets that is less robust than the protections available to customers of broker-dealers or security-based swap dealers.

As indicated in my rule petition, I respectfully suggest that the Commission should amend the Custody Rule to require that each investment adviser use a custodian that is independent of that adviser.

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I would appreciate if it the Office of the Secretary would add this letter to its file with my original petition.

Thank you for considering my views. I would be pleased to meet with members of the Commission or the Staff to discuss my suggestions.

Sincerely,

/s/

Stuart J. Kaswell, Esq.