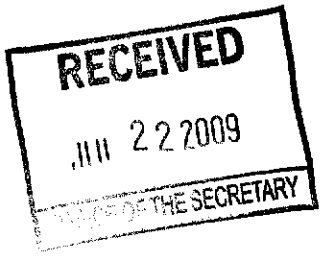
DIAMANT
ASSET MANAGEMENT, INC.

Comprehensive Portfolio Management

July 20, 2009

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

Dear Ms. Murphy:

Diamant Asset Management Inc. appreciates the opportunity to express its views in response to the Securities and Exchange Commission's (the "Commission") request for comments on the proposed amendments to Rule 206(4)-2.

Background

As an investment advisor registered with the SEC, under Rule 206(4)-2, we are deemed to have custody due to our affiliation with a broker/dealer. We use this affiliated, self-clearing broker/dealer to transact business and provide custody of our client's funds. Each advisory account is separately managed, with a traditional mix of stocks and bonds. The investment advisor is a small business, with two portfolio managers handling less than one hundred accounts. Both our advisory firm and broker/dealer continue to be family run and operated. Our comments are made with the perspective of over thirty years experience working at the same firm, handling a client mix of primarily individuals and their affiliated entities.

I support the Commission's view that there is great diversity among investment advisors, and any contemplated rule change must take into account the impact to various business models. The business model of using an affiliated broker/dealer as custodian to an investment advisor presents tremendous value to our client base, as it allows us to run a customer centric type of business. Our clients retain their confidentiality and privacy. Their security positions remain confidential, and their trading activity can be done without informing the market of their selling or buying patterns. Furthermore, the combination of these two affiliated entities provides fast, accurate, and very high touch customer service. From an audit perspective, the investment advisor knows the high level of compliance effort and internal audit processes of the broker/dealer. This audit process includes observing frequent reconciliation of client assets directly with the master sub custodian of DTC. To illustrate a smooth, well run operation, in the thirty-five years in business, our affiliated broker/dealer has never misplaced even one share of any security under its possession and control. It is common to have several generations of clients handled by our affiliated entities. Our clients have the trust and confidence in our business model to maintain long-term relationships with both entities. The business affiliation we provide our clients permits us to serve a share of the investment marketplace in a way we believe to be superior to other investment firms.

Need for a Rule Change

After such an upheaval, it would be human nature to impose new regulations to cure problems and protect customers. I would be cautious about rushing to amend 206(4)-2, just to demonstrate that the Commission can take action in the wake of a handful of fraud cases. The types of auditing procedures currently in place in the securities industry should detect the types of fraud recently brought to light. If mistakes were made, this does not mean the solution must be to add further regulations to the investment advisory industry.

I speculate that a person who decides to commit fraud will not be deterred by a surprise audit, and may actually be encouraged to further perpetuate their fraud just after the completion of a surprise audit. Instead of requiring surprise examinations, it would be enormously constructive to reconcile the regulatory review process (SEC, FINRA, State, etc) against the fraud that was occurring at the handful of firms the Commission has brought enforcement actions against (described in Footnote 11 of Release IA-2876). This should be conducted as an internal, fact-finding commission to both identify and learn what regulators missed, what red flags were visible, and how the frauds were perpetuated. One should expect a series of valuable recommendations, including training auditors differently, identifying future red flags, and elevating reviews of firms that trigger certain thresholds that are similar to the operation of these few fraudulent firms.

Custody by Related Persons

An advisor should not be deemed to have custody if its related broker/dealer holds assets in connection with the advisor's advisory services. Our investment advisor's role is to advise clients about their assets, not to take possession and control of these customer assets. For advisor firms with an affiliated broker/dealer, the broker/dealer has possession and control, and therefore custody of customer assets. This is easily verified by reviewing the Customer Statements of the brokerage firm of each customer. In contrast, the investment advisor does not hold client assets. The advisor uses information from the affiliated broker/dealer (the custodian) to prepare investment reports for the customer that may include market valuations and performance reviews. These advisory reports do not affirm custody to the advisor any more than one would affirm custody to a financial web site, i.e. Yahoo Finance, which attempts to provide similar reports to its users.

When a related person is a broker/dealer that has custody of customer assets, the circumstance arises where custody of the assets should not be imputed to the investment advisor. All customer assets held at a broker/dealer are already subject to heightened regulatory supervision pursuant to the Act of 1934. Since customer assets are already protected and subject to heightened supervision at the related broker/dealer, there is no further customer protection to be achieved by requiring surprise audits of the investment advisor.

In this circumstance, custody can be easily determined by the fact that the broker/dealer has possession and control of customer assets. Once this is confirmed, then custody should not be also imputed to the advisor. The advisor is in the business of rendering investment advice, not in the business of custody.

Advisory fees

When contemplating changes to Rule 206(4)-2, the Commission must also include an exemption for billing investment advisory fees from a customer account. Deducting agreed upon fees from a customer account should not be equated with taking possession and control of customer securities. Our advisory agreement includes a provision authorizing our fee payment, where the client requests advisory fees be paid from their brokerage account. There is no authorization for our advisory firm to otherwise take customer cash. The client receives our advisory fee billing describing both the calculation of the fee and the amount charged to their brokerage account. This fee payment amount is easily verified on the Customer Statement of the brokerage firm. This is a very straightforward process, which is simple to understand and review. After more than twenty-three years of billing clients in this method, we have not had any complaints concerning this method of billing from customers. If the Commission does not exempt our firm from a surprise audit, in addition to our internal costs of management and employee time diverted from handling customer matters, we anticipate it could cost our firm between $10,000 to $20,000 to engage our auditors to perform a surprise audit. As we have less than one hundred customers, this will be a huge additional compliance cost and burden to our firm. In this situation, the protection from a surprise audit does not warrant the expense. Most importantly, it does not increase protection of client assets.

Written Instructions from a Client

Another exemption may be needed when an advisor is acting on written instructions from a client. The business purpose of an investment advisor is to service the needs of their customer within a reasonable regulatory framework. Periodically, high net worth customers submit written instructions to take action on their account. This is commonly in the form of a transfer of securities to another account, or in the payment of funds to themselves or others. As the advisor typically has the client relationship, there must be consideration given to exempt an advisor acting on such client instructions from a surprise audit. Without such an exemption, the first time a customer instructs an advisor to say, transfer funds to their family member, the first thought that will run through the advisor's mind will be that this service will trigger a $10,000 - $20,000 audit fee. This audit fee may be in excess of the annual fees received from the client. In such a scenario, a practical, business-minded advisor would have to either ignore the client request or inform the client that their funds transfer will cost them an additional fee to cover an audit. In either scenario, the customer needs are not being served and no further customer protection has occurred.

Certification by Chief Compliance Officer

Requiring the Chief Compliance Office to certify that all client assets are properly protected and accounted for creates several compliance problems. As our advisor uses an affiliated broker/dealer with the master sub custodian of DTC, we can easily make such a certification. Yet an advisor using unaffiliated custodians may have a difficult time verifying each custodian has properly protected and accounted for every share and every dollar of client assets.

Second, if the Chief Compliance Officer has to certify that all customer assets are properly protected and accounted for, various advisory business models will make it impossible to settle on a sequence of industry wide steps to ensure compliance. It will then be up to each advisory firm to

determine how to comply, setting each advisory firm up for compliance problems when an examiner decides their interpretation of compliance differs. Even if the advisory firm's procedures manual addresses this subject and the certification is documented, I envision that firms will still be unable to provide enough backup documentation to the certification and the procedures testing to satisfy an examiner. Small firms that are able to fully comply will be faced with the reality that their business mix has moved away from primarily providing advice to providing audit documentation.

Internal Control Report

We support the proposal that if an independent custodian does not maintain client assets, but the advisor or a related person instead serves as a qualified custodian for client funds or securities under the rule in connection with advisory services the advisor provides to clients, the advisor must obtain, or receive from the related person, no less frequently than once each calendar year an internal control report, which includes an opinion from a PCAOB independent public accountant with respect to the advisor's or related person's controls relating to custody of client assets.

In our situation, this proposal will not provide additional protections for clients, because our affiliated broker/dealer currently operates under heightened supervision. However, the concept of an internal control report generated by the entity having possession and control of customer assets makes much more sense than requiring surprise audits of investment advisors engaged in rendering advice.

To require our investment advisor to also conduct a surprise examination that would cover the same information contained in an internal control report of our broker/dealer would clearly be duplicative, very costly, and provide no additional customer protection. Both the surprise exam and internal control report would cover the same material. Since PCAOB independent public accountants would be reviewing the same information, both reports will likely arrive at the same conclusion.

Upon receipt of such an internal control report, the Chief Compliance Officer of the investment advisor would then be satisfied that customer assets are properly protected and accounted for. More importantly, the Chief Compliance Officer must be able to rely on this report as complete documentation for the certification that all client assets are properly protected and accounted for.

Instead of a surprise audit, the proposal of an internal control report makes more sense, as the documentation regarding customer assets is generated by the entity that is responsible for properly protecting and accounting for customer assets. However, we would support this proposal only if it provides an exemption from the advisor being subject to a surprise audit.

Conclusion

The safekeeping measures currently required by Rule 206(4)-2 provide our clients with the ability to sufficiently identify and detect erroneous or fraudulent transactions. When contemplating the fraudulent actions of a handful of persons versus the substantial number of bonafide registered investment advisors, the Commission must recognize the safeguards currently mandated by Rule 206(4)-2 are sufficient to deter almost every advisor from engaging in fraudulent conduct.

Given that existing safeguards in place are adequate and considering the adverse effects of a mandatory surprise audit on advisors as well as clients, we respectfully request that the Commission leave current Rule 206(4)-2 intact and unchanged with respect to advisors who have an affiliated broker/dealer that has custody, and to advisors that have the authority to deduct advisory fees from client accounts. In our instance, since customer assets are already protected and subject to heightened supervision at the related broker/dealer, there is no further customer protection to be achieved by requiring surprise audits of the investment advisor. We thank the Commission for the opportunity to comment on this matter.

Yours truly,

Herbert Diamant
President