1st GLOBAL

THE BUSINESS DEVELOPMENT PARTNER TO LEADING WEALTH MANAGEMENT FIRMS

June 26, 2009

Submitted electronically to
rule-comments@sec.gov

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

Re: 1st Global Advisors, Inc. response to
File Number S7-09-09
Custody of Funds or Securities of Clients by Investment Advisers

Dear Ms. Murphy:

1st Global Advisors, Inc. ("1st Global") is a federally registered investment advisory firm which conducts business in all domestic jurisdictions, with over 1,000 investment adviser representatives offering investment advice through nearly 625 branch locations.

As the Chief Compliance Officer of 1st Global, I appreciate the opportunity to submit comments on the issues raised in the above captioned new rule proposal by the Securities and Exchange Commission ("Commission").

1st Global holds the opinion that any regulatory action, like this proposal, which has its genesis in a case of specific bad conduct, should be limited to address the specific instance of bad conduct that gave rise to the regulatory action. The Madoff situation and numerous other ponzi scheme's that are now coming to light, share one commonality—the lack of an independent custodian. That lack of the presence of an independent custodian allowed bad actors to issue fictitious statements to those who had invested with them. Given its viewpoint and these facts, 1st Global is fully supportive of the portion of the proposal that would require investment advisory firms which do not maintain client accounts at an independent qualified custodian (e.g., advisory firms with actual custody) to obtain a written report from an independent public accountant that includes an opinion regarding the qualified custodian's controls relating to custody of client assets.

On the other hand, 1st Global holds the opinion that the portion of the proposal that would require registered investment advisers that have custody of client funds or securities to undergo an annual surprise examination by an independent public accountant to verify client funds and securities is unwarranted in its application to most investment advisors that occupy this category. It is unwarranted because many investment advisers do not possess ***actual*** custody of client funds but are merely deemed to have custody because they debit advisory fees directly from their client's accounts. In such a situation, the client receives a statement from an independent custodian. Therefore, any unlawful conduct involving unauthorized distributions from the clients account will be visible to the client via their statements and subject to immediate redress. Subjecting the thousands of advisory firms that make up this particular category of investment advisers merely because they debit fees from client accounts to the additional cost of an annual "surprise" audit by their CPA firm focused on verifying client funds and securities seems unwarranted in two respects. First, this requirement is not appropriately tailored to address the specific bad conduct which gave rise to the proposal and, second, the costs of this particular element of the proposal far outweigh any potential benefit that will be derived by the clients of investment advisors who are merely ***deemed*** to have custody but who in fact do not have custody.

For the reasons stated above, we would therefore answer the Proposal's request for commentary on the inquiry – Should we except from the surprise examination requirement advisers that have custody of client funds or securities solely as a result of their authority to withdraw advisory fees from client accounts? – in the affirmative. You should exempt such advisers from a surprise examination requirement. Providing for such exemption would be consistent with the Commission's current stance as conveyed in the Form ADV directions to Item 9 which state, "In this Item, we ask you whether you or a related person has custody of client assets. If you are registering or registered with the SEC and you deduct your advisory fees directly from your clients' accounts but you do not otherwise have custody of your clients' funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2)." It would also be consistent with the Commission's pre-2003 recognition in a line of no action letters (*e.g. Investment Counsel Association of America, Inc.,* SEC Staff Letter (June 9, 1982); *John B. Kennedy*, SEC Staff Letter (June 5, 1996); and *Securities America Advisers Inc.*, SEC Staff Letter (Apr. 4, 1997)) of the fact that so long as certain procedures were followed advisers who had authority to withdraw advisory fees from client accounts would not be treated in the same manner as advisors that actually had custody of client funds.

The Proposal also asked for commentary on whether there are alternatives to the surprise examination that might provide similar protections, or are there additional requirements that should be considered.

1st Global would advocate that there are several possible alternative approaches to the surprise examination component of the proposal. First, the Commission could simply prohibit any self-custodial relationship as well as one involving an affiliate of the investment adviser. This would ensure the presence of an independent custodial entity and make it close to impossible to operate a Ponzi type scheme for anything more than a very short period of time. Second, the Commission could chose to harmonize the treatment of registered investment advisory firms with that of broker-dealers by enacting requirements that mirror the Exchange Act treatment of broker-dealers. More specifically, require that all registered investment advisory firms maintain certain levels of minimum net capital, have their financial statements audited annually and require that the audit include a review of the firm's procedures for safeguarding client funds. While the audit component of this later suggestion is very similar to the proposal, please note that it does not include a "surprise" audit focused solely on the verification of client funds and securities. The suggestion would amount to a more routine CPA audit which due to its broader scope would be more appropriately tailored for investment advisory firms which do not maintain actual custody. It would validate the financial situation of the firm and validate annually that the firm does in fact not maintain actual custody of client funds.

In summary, 1st Global believes that the effect of this proposal should be limited to firms that have actual custody of client funds not those that are merely deemed to have custody because they debit fees from client accounts.

Sincerely,

Michael A. Pagano
Chief Compliance Officer