Ascendant

Compliance Management

16 Conklin Street
Salisbury, CT 06068
Tel. (860) 435-2255
Fax (212) 435-2264

140 W. 57th Street, Suite 4D
New York, NY 10019
Tel. (212) 956-9142
Fax (212) 956-9782

July 27, 2009

Elizabeth M. Murray, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Number S7-09-09
Amendments to Custody Rule

Dear Ms. Murray:

Ascendant Compliance Management has hundreds of investment advisers and broker dealers as consulting clients. Our clients range from start-up firms to asset managers with hundreds of billions of dollars under management. Most of these firms are independent investment firms whose clients' assets are within the possession and control of an independent custodian. Ascendant's clients also further include advisers who self-custody assets, manage omnibus accounts and control private investment funds.

Ascendant's services range from advice on specific compliance rules to conducting enterprise risk assessments and annual compliance reviews. Ascendant assists client with internal control reviews and the drafting of disclosure documents. We further maintain relationships and open dialogue with some of the country's most popular custodial platforms.

Based on our experience with this diverse set of financial firms, we welcome this opportunity to express our concerns in relation to the SEC's Proposed Amendments to Rule 206(4)-2 of the Investment Advisers Act. While a portion of the rule proposal appropriately focuses on the internal controls of "actual" custodians, we respectfully offer our opinion that the portion of the rule with the widest application would create unnecessary and ineffective costs and burdens on too many advisers.

As the SEC notes in its proposal, the amended rule would require more than 7000 investment advisers to be reviewed by independent public accountants for the single reason that the investment advisers directly debit fees from advisory client accounts. For a number of reasons that follow, we do not believe this application survives a cost benefit analysis.

First, it should be recognized that under this rule proposal an investment adviser would be required to retain a certified public accountant to review those accounts over which the adviser has "custody". In conducting this examination, the accountant will be informed by the adviser which client accounts should be examined. The examining accountant will only have the knowledge and ability to review those client accounts which the adviser self-reports to the accountant as necessary for review. This approach leaves an obvious gaping hole in any attempt to prevent fraud.

Second, as noted by many others, the debiting of fees has not presented itself as a source of fraud in the industry.

Third, we recommend that additional custodial controls should focus on the parties who have actual possession and control of investor assets. Brokers, banks and other denoted custodial institutions are currently regulated for such purposes. Controls related to client signatures and authorizations, change of address forms, and direct mailing of account statements to investors, for example, offer substantive custodial protections. Related processes and procedures should be codified as applicable to accounts over which investment advisers may have limited powers of attorney. Ascendant suggests this as a more practical and effective approach to further safeguarding client assets.

Ascendant additionally suggests that the SEC could improve investor protections via disclosure obligations of investment advisers. Neither current rules nor Form ADV instructions require advisers to provide clients with information about the levels of authority and control that advisers have over client accounts. Nor do disclosure obligations require advisers to explain to clients that the clients should rely on custodial account statements to review activity within accounts.

Ascendant recommends that the SEC should add protections by implementing such disclosure obligations for investment advisers. (The SEC's current pending proposal to amend Form ADV, Part 2 includes some disclosure obligations related to custody.) Specifically, advisers should be required to disclose the extent of any powers of attorney over client assets.

Ascendant agrees with many other aspects of the SEC's proposed custody rule. It seems clear that the additional controls by the SEC related to non-transparent assets and "actual" custodians are warranted. Also, mandating that advisory clients always receive account statements directly from "actual" custodians would be a strong control in our financial markets.

In conclusion, Ascendant recommends that the SEC adopt its rule proposal substantially as proposed; however, the proposed rule should be amended to eliminate its application to circumstances in which advisers debit fees.

Very truly yours,

Keith Marks
General Counsel
Ascendant Compliance Management, Inc.
(860)435-2255 ext.103
kmarks@ascendantcompliance.com