Allegheny Investments

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July 28, 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. 1A-2876

File No. S7-09-09

Dear Ms. Murphy:

Allegheny Investments, LTD ("AI"), and Allegheny Financial Group, LTD ("AFG") appreciate the opportunity you have given us to comment on the Securities and Exchange Commissions ("SEC") proposed amendments to Rule 206(4)-2 promulgated under the Investment Advisers Act.

AI is a dually licensed broker dealer and federally registered investment advisor. AI is an "introducing" broker dealer, clears trades through an independent clearing broker dealer, and maintains virtually all assets with that broker dealer or another independent custodian. AFG is a federally registered investment advisor. (AI and AFG will hereinafter be jointly referred to as "Allegheny".) We recognize and applaud the SEC's attempts to better protect investors' assets, but we submit that any proposed changes should bear a rational relationship to the behavior such changes are intended to address. We believe that the proposed modifications to the current "custody rule" may be more detrimental than advantageous to many retail investors.

The "surprise audit" proposal, coupled with the written controls audit ("SAS 70") would be prohibitively expensive to regional broker dealers, (estimated costs of the proposed SAS 70 audit approach $250,000) and would limit the services and options available for lower net worth clients who most need professional investment assistance.

The proposed rule makes no allowance for a *de minimus* situation in which the investment advisor only has actual or imputed custody of very few accounts. For instance, an investment advisor representative may serve as a trustee or executor, or hold a power of attorney, for a long-time advisory client. These services are offered for little or no additional fees over usual fees charged for advisory services. Making it prohibitively expensive for investment advisor representatives to perform these services is a disservice to those clients.

In addition, as permissible under the current rules, some investment advisor representatives already serve in a capacity in which they would be deemed to have custody under the proposed rule (i.e. having served as a trustee for a client trust for a number of years or as executor of a client estate). It would be extremely detrimental to the client to now be required to change this arrangement, since these changes could result in both additional fees chargeable to the client and a disservice to the client resulting from a midstream change in the trustee or executor. Further, this puts investment advisors at a competitive disadvantage in that they will be required to comply with these expensive audit requirements, where other professionals, such as attorneys or a certified public accountants, could serve in these capacities without this arduous requirement. The integrity of such accounts is already protected, since investment advisors serving as executors or trustees are subject to supervision and review by the judges of the Orphans' Court (in Pennsylvania) or its equivalent.

A number of funds have been formed under the current rules. We respectfully request that you consider "grandfathering" these funds, and making the new custody rules applicable only to newly formed funds. Changing the rules mid-stream will operate to the detriment of the current investors, and deprive them of the benefit of their bargain. At the very least, please consider phasing in the proposed custody rules in order to give investment advisors and clients the opportunity to make alternate arrangements to best serve the investors' interests.

For these reasons, we respectfully suggest, in order to better protect investors while not unduly restricting the services such investors may desire, the following revisions to the proposed rule amendment:

- Establish a *de minimus* exemption if a registered investment advisor is deemed to have custody of less than 1% of all client accounts if such accounts are subject to the following three requirements:
    - Require that such accounts be held with an independent custodian, and require that an independent professional (attorney or certified public accountant) receive statements from the independent custodian on a monthly basis; or
    - Require that the registered investment advisor maintain an insurance bond for the entire principal amount invested in such accounts; OR
    - Require that the investment advisor institute heightened review and oversight standards for these accounts.
- With respect to "pooled" investment funds consisting only of accredited investors:
    - Require statements to be delivered at least quarterly by a qualified custodian; AND
    - Permit accredited investors to opt out of the audit and surprise examination requirement.

Again, thank you for considering our comments on this proposed rule.

Sincerely,

Aimee A. Toth
Chief Compliance Officer, General Counsel