CLS INVESTMENTS

July 28, 2009

Via www.sec.gov

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

Re: File Number S7-09-09; Proposed Rule Custody of Funds or Securities of Clients by Investment Advisers (Release No. IA-2876)

Dear Ms. Murphy:

As a registered investment adviser with the Securities and Exchange Commission (the "SEC"), CLS Investments, LLC ("CLS") would like to express its view of the proposed amendments to Rule 206(4)-2 (the "Custody Rule") under the Investment Advisers Act of 1940. CLS is an SEC registered investment adviser providing asset management services to approximately 43,000 clients as well as serving as investment adviser/sub-adviser to 11 mutual funds. CLS has approximately $3 Billion in assets under management and is a subsidiary of NorthStar Financial Services Group, LLC which together with its affiliates collectively service hundreds of investment advisers, mutual funds and financial professionals.

CLS is fully aware of several recent enforcement actions the SEC has brought against investment advisers, highlighting a deficiency in the manner in which some client assets have been custodied. While CLS strongly supports the SEC's efforts to protect the investing public, CLS strongly opposes many of the provisions set forth in the proposed Custody Rule and appreciates this opportunity to voice its concern regarding the scope and application of the proposed Custody Rule.

Annual Surprise Examination of Client Assets

We believe it is not appropriate to require registered investment advisers who are deemed to have custody of client assets solely because of their ability to request the

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deduction of advisory fees undergo an annual surprise examination. Our initial discussions with some accounting firms regarding the costs associated with a surprise examination for all accounts revealed that costs will be materially higher than estimated in the proposed Custody Rule. In the case of investment advisers utilizing affiliated custodians, we agree there exists a greater risk of misappropriation and it would be appropriate in such instances to require additional safeguards. In lieu of the proposed annual surprise examination for all investment advisers deemed to have custody, we believe additional requirements are appropriate for investment advisers utilizing affiliated custodians and we propose the following 4 prong approach:

1. Require that the Chief Compliance Officer of the investment adviser to annually review accounts held at an affiliated custodian on a random sample basis as part of the annual review responsibilities under Rule 206(4)-7.

2. Reinstate the advisory fee notice requiring the investment adviser to provide the investor a notice, either enclosed with the quarterly account statement or separately, setting forth the fee and its calculation within 10 days of the fee being deducted from the client's account.[1]

3. Require that accounts be subject to an independent accountant review at least every 3 years utilizing a statistically appropriate random sample basis. We believe that the proposed double check for ALL client account balances is unreasonable and not necessary to protect investors, but rather the rule should specify that the accounting firm use a statistically appropriate sample under applicable accounting principles. Accounting firms currently use statistical sampling to gather assurances for financial audits. The costs associated with verifying each account balance is prohibitive and not a practical solution for investment advisers with tens or hundreds of thousands of accounts.

Further, we believe that investment advisers that have other types of reviews performed, such as annual reviews in conformance with the Global Investment Performance Standards ("GIPS") pose less of a risk of misappropriation of client funds. GIPS audits result in significant testing of an investment adviser's accounts, fees, procedures, etc. We believe that the independent accountant review should take into account other audits and therefore may be further limited in scope.

[1] We believe it is beneficial for all investors to receive an advisory fee notice setting for the advisory fee and its calculation irrespective of whether the custodian is affiliated or not.

4. Require the investment adviser to ensure such affiliated custodian obtains a SAS 70 type II exam on at least an every other year basis. We are aware that SAS 70 reviews are designed to ensure that procedures are properly designed and followed and could serve as an additional safeguard of client accounts held by the custodian.

Independent Qualified Custodians

We believe that the additional safeguards outlined above would provide a reasonable means to monitor compliance with applicable laws. We do not believe it is appropriate to mandate the use of non-affiliated custodians. It is important to understand that a custodian is subject to significant regulatory oversight and routine examinations, the scope of which includes a careful review of accounts managed by affiliates. In many cases, an examination of a custodian occurs on an annual basis. Utilizing an affiliated custodian assists with controlling overall client costs, customer service and ensuring that laws applicable to investment advisory business are followed (i.e. prompt delivery of quarterly account statements identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.)

Additional Safeguards

As a final note, we believe it would be appropriate for the SEC to consider additional safeguards to protect the investing public. Such safeguards could include:

1. Additional requirements to become an investment adviser such as requiring a minimum net capital be maintained.

2. Require fidelity bonding of investment advisers. Along with providing a specified insured level of protection resulting from employee theft, the insurance companies require annual underwriting, which in many instances require a review of the investment adviser's policies and procedures.

3. Enhance frequency and scope of regulatory reviews and require the investment adviser to pay for SEC examinations.

Thank you for your consideration.

Respectfully,

Brian Nielsen
General Counsel