



STATE STREET.

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July 28, 2009

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

RE: File Number S7-09-09

Via e-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Proposed Rule -- Custody of Funds or Securities of Clients by Investment Advisers**

Dear Ms. Murphy:

State Street Corporation appreciates the opportunity to comment on the Securities and Exchange Commission's (the Commission) proposed amendments to the Commission's rule 206(4)-2 (17 CFR 275.206(4)-2; "the custody rule") custody rule under the Investment Advisers Act of 1940, as described in the proposed rule titled "Custody of Funds or Securities of Clients by Investment Advisers" (the "Proposed Rule") published in the Federal Register on May 27, 2009.

Headquartered in Boston, U.S.A., State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$16.394 trillion in assets under custody and administration and \$1.557 trillion in assets under management at June 30, 2009, State Street operates in 27 countries and more than 100 geographic markets worldwide.

State Street shares the Commission's concern with the misappropriation and other misuse of investor assets described in Footnote 11 of the Proposed Rule, and agrees custodians play a critical role in the prevention and discovery of potential fraudulent or criminal activity by investment advisers. As the Commission is aware, despite recent discovery of several high-profile instances of misappropriation, such activities remain relatively rare among Registered Investment Advisers ("RIAs"), in part due to the duties imposed by the Commission's existing custody rule. We note, in particular, that none of the examples cited in Footnote 11 involve bank custodians.

We support the Commission's current enforcement and examination efforts in this area, and appreciate the need for the Commission to review the custody rule and consider changes to "decrease the likelihood that client assets are misused, or would increase the likelihood that fraudulent activities are discovered earlier and client losses are thereby reduced."

While we note and appreciate the RIA community's concern over the proposed increased cost of the Proposed Rule, and urge the Commission to take these concerns into account as it develops a final rule, our comments today focus on the Commission's discussion of the need for "independent" custodians, particularly the questions posed on FR 25360 seeking comment on the advisability of requiring the use of a custodian unaffiliated with the RIA.

While State Street appreciates the apparent simplicity of addressing potential misappropriation or misuse of investor funds through a requirement directed at the relationship between the ownership or legal structure of the RIA and the custodian, we suggest the Commission's goal under its custody rule will be better advanced by remaining focused on the functional independence of the custodian, rather than its affiliation with the RIA. In fact, absent strong rules requiring such functional independence of the custodian, rules focused solely on potential affiliation could reduce, rather than enhance, investor protection.

Banks providing custody services to RIAs, in particular, are already subject to extensive regulation and examination by various local and federal regulatory authorities. They are subject to rigorous periodic (or, for large banks, continuous) on-site examinations, a wide range regulatory oversight of custodial activities, conflicts of interest, recordkeeping, and management information systems, and regulatory examination and testing of internal controls.

Custody provided under the bank regulatory system provides strong protection for investors with RIAs, regardless of the affiliation of the RIA with the bank custodian. Similarly, the Commission's custody rules for investment companies provide similarly strong protection to investors, and also permit, with proper controls, custody by affiliates of the investment adviser. We suggest the Commission's custody rules for RIAs remain focused on the functional independence of the custodian, rather than the potential legal affiliation between the RIA and its service providers.

In addition, on a narrower issue, in some cases our customers may provide custody and other services to RIAs, but delegate certain custodial services to State Street. In such cases, should the RIA be required to obtain an internal control report under the proposed "related persons" requirement, we believe it would be appropriate to allow State Street's customer to rely on State Street's audited internal control report for services which have been delegated to us. We suggest the Commission clarify that such reliance is permissible under the final rule.

Once again, thank you for providing State Street Corporation the opportunity to comment on the Proposed Rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan M. Gavell', written in a cursive style.

Stefan M. Gavell