

July 28, 2009

**VIA ELECTRONIC DELIVERY**

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090  
USA

**RATHBONES**  
Established 1742

Re: Investment Advisers Act Release No. 2876 (File No. S7-09-09): Custody of Funds or Securities of Clients by Investment Advisers

Dear Ms. Murphy:

We respectfully submit this letter in response to a request by the Securities and Exchange Commission ("SEC") for comments regarding the proposed amendments ("Proposed Amendments" or "Proposed Custody Rule") to Rule 206(4)-2 ("Custody Rule" or "Rule") under the Investment Advisers Act of 1940, as amended, relating to custody of funds or securities of clients by SEC-registered investment advisers.<sup>1</sup>

Rathbone Investment Management Limited ("Rathbones") is a U.K.-based asset manager registered as an investment adviser with the SEC and regulated by the U.K. Financial Services Authority (the "FSA"). Rathbones serves as investment adviser to approximately 250 U.S. clients, many of whom have emigrated from, or have family based in, the United Kingdom. Rathbones has permissions under the FSA regime to accept deposits and is regulated as a bank in the United Kingdom. Rathbones is a direct subsidiary of Rathbone Brothers plc, a company organised under the laws of England and Wales which, through its subsidiaries, is a leading independent provider of investment and wealth management services for private investors, charities, and trustees, including discretionary asset management, trust and company management, pensions advisory and banking services. Rathbone Brothers plc is a FTSE 250 listed company with approximately £10 billion of funds under management, as at the 5<sup>th</sup> April 2009, and is one of the largest and longest-established independent private client investment and wealth management companies in the U.K.

Under the Proposed Custody Rule, the SEC would require all investment advisers with custody of client assets to engage an independent public accountant to conduct an annual surprise examination to verify the funds and securities in each client's account (the

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<sup>1</sup> See *Custody of Funds or Securities of Clients by Investment Advisers*, Rel. No. IA-2876 (May 20, 2009).

“Surprise Examination”). The Proposed Custody Rule would also require that each adviser with self-custody (or for whom an affiliate provides custody) would need to obtain a written report from an independent public accountant registered with the Public Company Accounting Oversight Board (“PCAOB”), including an opinion on the adviser’s (or the affiliate’s) controls relating to custody (the “Control Report”). We believe that these proposals impose unnecessary costs and burdens on advisers and, in particular, disproportionately impact investment advisers domiciled outside the United States.

(1) *Investment Advisers that are also Banks already have Adequate Alternative Protections in Place*

As noted above, Rathbones is a regulated bank in the United Kingdom. Banks in the United Kingdom are subject to many levels of control and scrutiny, and we believe the additional requirement to obtain an annual Surprise Examination to verify the funds and securities in each client’s account as well as a Control Report does not provide helpful extra protection.

As a regulated bank in the UK, Rathbones is subject to regulation by the FSA. As such, Rathbones is subject to ongoing scrutiny by a team of FSA staff responsible for Rathbones’s registration. In addition, a number of Rathbones supervised persons are required to be registered individually with the FSA as “approved persons”, including all directors, the compliance officer, portfolio managers and any other person dealing with customers.

As a regulated investment manager and bank, Rathbones is subject to annual audits by external auditors. In order for an auditor to serve an FSA regulated firm, the auditor must be eligible under the Companies Act 1989 and the firm must notify the FSA of the auditor to be appointed and the FSA have the right to enquire in to the auditors experience to undertake the appointment. The annual audits conducted by the external auditors comprise a review of the systems in place for holding clients’ assets and a review of the reconciliation process. The auditors are required by regulations to report to the FSA on their findings in relation to client assets and client money held.<sup>2</sup> The auditors also must provide an opinion as to whether (1) the FSA-regulated firm maintained systems adequate to allow it to comply with the FSA custody rules and client money rules throughout the year and (2) the firm was in compliance with the FSA custody rules and client money rules at the end of the year.

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<sup>2</sup> For information on the duty of auditors to report to the FSA on custody of assets, see the FSA Handbook at <http://fsahandbook.info/FSA/html/handbook/SUP/3/10>.

We believe that this audit process, combined with the strong regulatory oversight by the FSA, provide adequate protections. We suggest that investment advisers could be required to publish a report from their auditors as part of Form ADV Part I or Form ADV Part II to give additional information to clients and to the SEC about the safeguards in place in connection with the self-custody of assets.

(2) *The Proposed Custody Rule Provisions Create Unfair Costs and Burdens on Advisers Based outside the United States*

As noted above, the Proposed Custody Rule would require all advisers with custody (or using affiliates to provide custody) to obtain a Control Report from an independent public accountant registered with, and subject to regular inspection by, the PCAOB. The requirement to use an accounting firm registered with the PCAOB creates an extra burden for investment advisers based outside the United States. It is likely that many accounting firms outside the United States may not be registered with the PCAOB, and the ones that have chosen to register with the PCAOB may charge a premium for work above that which might be charged in the ordinary course of business. In a number of countries, it is likely that no local accounting firms will be able to conduct the inspection or provide the required Control Report.

For these reasons, we believe that the requirement to obtain the Control Report from an independent account registered with the PCAOB creates unfair costs and burdens on investment advisers based outside the United States, and disproportionately impacts investment advisers based outside the United States.

We also note that the Proposed Custody Rule will raise the costs of doing business in the United States, and may make it unfeasible for some firms to offer advisory services to U.S. clients. In the case of Rathbones, the vast majority of our clients are based in the United Kingdom. We have only a small number of U.S. clients who, perhaps because they emigrated from the U.K. or have family based in the U.K., wish to be our clients. We believe that complying with the proposed custody requirements will result in a high extra level of costs which may not be sustainable given the fact that U.S. clients represent only a very small portion of our business.

If the SEC or its staff have any questions or wish to discuss with us the matters mentioned in this letter, please contact Paul Chavasse at [paul.chavasse@rathbones.com](mailto:paul.chavasse@rathbones.com), Nick Johnson at [nick.johnson@rathbones.com](mailto:nick.johnson@rathbones.com), or John Moorley at [john.moorley@rathbones.com](mailto:john.moorley@rathbones.com).

Yours sincerely,

  
Paul Chavasse  
Chief Operating Officer