FIRST LONG ISLAND INVESTORS, LLC, ONE JERICHO PLAZA, JERICHO, NEW YORK 11753-1673

July 28, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission

Re: File Number S7-09-09

To Whom It May Concern:

I respectfully submit this letter in response to the Securities and Exchange Commission's (the "Commission") request for comment (in Investment Advisers Act Release No. 2876, May 20, 2009 (the "Release")) on the proposed amendment of Rule 206(4)-2 (the "Rule") under the Investment Advisers Act of 1940, as amended, relating to custody of funds or securities of clients by investment advisers.

Surprise Examinations

The Release proposes that "all registered investment advisers with custody of client assets obtain an annual surprise examination regardless of whether . . . , in the case of a pooled investment vehicle, the pool is audited at least annually and distributes its audited financial statements to its limited partners (or other investors) within 120 days of the end of its fiscal year." The Release then asks if an annual surprise examination would increase protections afforded to advisory clients (including investors in pooled investment vehicles).

We submit that where a pooled investment vehicle is audited annually, providing for an additional (surprise) examination would not meaningfully add to investor protection. Providing for an additional surprise examination would not meaningfully protect investors as it would only accelerate by some number of months the discovery of defalcations. I believe that most, if not all, of the recent SEC enforcement actions highlighted frauds that went undiscovered for years or decades, not months. I expect that, in light of recent enforcement actions, accountants will enhance their audit verifications of investment pools' holdings. And, the Commission can mandate enhanced verifications as part of required audit procedures (including spot checks of mid-year statements). Rather than increase the frequency of examinations, annual audits should be made more effective.

Custody Through Related Persons

The Release also questions whether an adviser should be deemed to have custody of client assets where an adviser has access to client assets through a related person. Employees of some investment advisers are trustees for client's trust(s), or hold powers of attorney from client(s), based on the employee's relationship with the client. Where the authority granted to the employee is based on a personal relationship of trust, and not because of the advisory relationship, *Investment Advisers Act Release 2176, September 25, 2003,* noted that the SEC would not treat this as giving rise to custody (FN15). This provision should be retained.

Additionally, where a client has granted authority to an employee of an Investment Adviser to access the client's funds (such as the grant of a power of attorney or appointment as trustee), the advisory firm shouldn't have to take extraordinary measures to conduct surprise examinations of that client's accounts. In the normal advisory relationship, clients grant only limited discretion to the adviser to select stocks or bonds but not to have access to the client's funds. Where a client knowingly and expressly grants discretion to include access to her funds, which I believe is rarely granted, the client does not expect her grant of authority to be reviewed by an auditor. Additionally, who would the Commission burden with surprise audit expenses? Why should an advisory firm pay for an audit/surprise examination of accounts where a client granted an employee of that firm a power of attorney or named the employee a trustee? Why should the principal or agent pay for the audit/surprise examination? If because of this regulation, additional costs were imposed on clients, advisory firms, or their employees, clients would likely not hire experienced and knowledgeable persons who are employed by advisers to serve as trustees, or hold powers of attorney, but instead be forced to retain less experienced or knowledgeable advisers who fortuitously are not employed by investment advisers. And, although I doubt a client would grant a power of attorney to, or appoint as trustee, someone she felt she needed to audit, the client can arrange for whatever audit or examination she deems necessary without SEC rule making.

Examinations of Small, Illiquid Partnerships

Often an investment partnership, due to the sale of assets over time, illiquidity of assets, or depreciation of assets, does not have the assets or liquidity to pay for ongoing expenses. How would the Commission propose that an old partnership with almost "worthless" or illiquid investments pay for an examination? What benefit would partners receive for an examination of a small partnership holding primarily illiquid assets (private stock, limited partnership interests or real estate)? If the general partner believes that some value may eventually be realized from the partnership's assets, it would normally not liquidate the partnership, yet the partnership might not have sufficient liquidity to pay for an examination. Also, the limited partners of the partnership would not want to make additional contributions to a partnership to pay for an examination of an entity with insubstantial assets, would likely not be obligated to contribute additional sums to the partnership (for any purpose), and wouldn't want the partnership to expend the liquidity it had (if any) to pay for an examination. This is especially true in instances where a partnership has existed without defalcations for years. And a general partner who is a registered investment adviser certainly did not expect to pay substantial sums for examinations of small partnerships formed years ago.

I submit that it would be unfair to impose these unexpected extra costs on investment advisers, some of whom act as general partner of many such pre-existing partnerships. For an adviser with many such partnerships, the costs would be substantial. General partners may be forced by economic necessity to dissolve these partnerships and distribute the remaining assets to limited partners (where it could do so). This would be burdensome on limited partners who would not want to have direct interests in the partnership's underlying investments and who would lose the benefit of aggregating their investments into a single larger investor. And where a partnership could not be terminated, burdening registered investment advisers with those costs (especially in this difficult economy) would unfairly cost advisers substantial sums (for those who act as general partner of several partnerships, especially in high-cost locations) because of bad acts by others, and could lead to layoffs of employees.

Imposing these costs for investment advisers could also disincentivize the raising of new investment capital if partnerships had to bear substantial extra compliance costs.

If surprise examinations must be instituted on small, illiquid, privately offered partnerships, I urge that the rule only apply to newly formed partnerships of significant size – such as those with contributions in excess of $25 million and that continue to hold assets with at least that value.

I distinguish here hedge funds which hold liquid investments, hold regular closings for new subscriptions and to provide liquidity to limited partners, and that are exempt from the definition of investment company by virtue of Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, as amended. See the discussion of Surprise Examinations, *supra.*

I hope that the Commission will find this letter helpful, and I would be pleased to further discuss these matters with members of the Staff at their convenience.

Very truly yours,

Bruce A. Siegel

Bruce A. Siegel
Executive Vice President &
General Counsel

BAS/gpf