

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Amendments to Rule 206(4)-2
Release No. IA-2876
File No. S7-09-09

To the Commission:

Atherton Lane Advisers, LLC is an SEC registered investment adviser that offers comprehensive wealth management and investment counseling services to private clients. We are writing to offer our comments on the proposed amendments to Rule 206(4)-2 (“Custody Rule”). In particular, our comments are focused on the proposal to require an independent public accountant to conduct an annual surprise examination of client assets of those investment advisers who are deemed to have “custody” solely as a result of their authority to deduct advisory fees from client accounts.

We strongly oppose this proposal for several reasons. First, imposing a “surprise” exam requirement on advisers who are deemed to have custody solely due to their authority to deduct fees is an unnecessarily burden with no corresponding benefit of protecting public customers. The main goal the Custody Rule is to increase scrutiny of advisers who **actually** hold client assets with no independent third party custodian involved. Recent highly publicized fraud cases involve advisers with **actual** custody, and imposing an annual “surprise” exam on such advisers could result in better protection of client assets. It is our understanding that cases of adviser fraud have not arisen solely from an adviser’s authority to deduct fees from client accounts, and the imposition of the same surprise exam requirement on such advisers is unnecessarily burdensome and will provide no additional protection to public customers.

Second, current rules provide sufficient safeguards to clients whose assets are held with qualified independent custodians. Our client’s assets are maintained in accounts with an independent qualified custodian, and our clients agree in writing that management fees will be deducted directly from the account. Rule 206(4)-2 already requires the independent custodian to deliver quarterly statements, on a quarterly basis, directly to clients. The statements list all funds, securities, and activities in the clients’ account, including the deduction of management fees. The quarterly statements enable clients to monitor all activity in their accounts, and are sufficient to deter advisers from engaging in fraudulent conduct