THE ASSOCIATION OF GLOBAL CUSTODIANS

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August 3, 2009

By Electronic Delivery

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

RE: File Number S7-09-09; 74 Federal Register 25354 (May 27, 2009)

Dear Ms. Murphy:

We write on behalf of the members of the Association of Global Custodians ("Association") with respect to the Securities and Exchange Commission's ("Commission's") proposals to modify Rule 206(4)-2 under the Investment Advisers Act of 1940.[1] We appreciate the opportunity to comment on the proposals and to address questions the Commission raises in the proposing release.

Members support the Commission's effort to review the existing rules governing the safekeeping of investor assets that are deemed to be held in custody by registered investment advisers. Particularly in view of the events of last Fall, it is important to take effective steps to ensure investor protection against the risks of fraudulent activities. In adopting rules to achieve that goal, however, the Association opposes any requirement that an "independent custodian" rather than a "qualified custodian" be used to hold investors' assets.

Among the multiple functions offered by Association members, members are leading providers of custodian services to institutional clients, including pension funds, mutual funds, insurance companies and banks. Members are highly regulated, supervised and examined by various local and federal regulatory authorities. They are

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[1] Members of the Association are listed on the letterhead above.

subject to periodic comprehensive audits, and they operate pursuant to a wide variety of formalized disciplines and internal controls.

Requiring the use of an "independent custodian" instead of a "qualified custodian" to hold investor assets would severely impair the ability of investors or investment advisers to select the best qualified custodian on the basis of performance and ability to safekeep assets. Where custodian banks and their affiliated investment advisers operate with well-defined separation of controls and duties, requiring "independence of affiliation" rather than "independence of function" would provide little, if any, new or additional assurance of asset safety to investors. Indeed, we note that none of the specific litigations cited in footnote 11 of the Commission's proposing release involves a bank custodian.

In addition, requiring a bank investment adviser to engage a legally "independent" custodian would impose significant and unnecessary costs on bank custodians, their affiliated bank investment advisers and ultimately investors. New costs to investors and the industry would be introduced simply in transitioning relevant portfolios from the chosen custodian to a new "independent" entity; and it is not at all clear that an "independent" custodian would ultimately provide better risk mitigation services at a more efficient price and service value point than the adviser's affiliated bank.

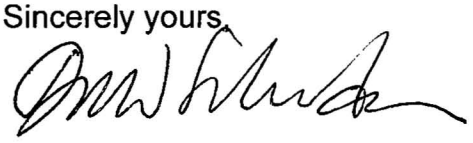
More significantly, new costs to custodians would arise in attempting to satisfy verification requests incident to the proposed surprise audits. As a practical matter, custodians would likely need to take special steps to facilitate surprise audits, including working with non-US subcustodians with respect to verification of foreign holdings.

Beyond those general concerns, Association members would also need practical guidance concerning how the proposed independent audit requirements would apply to certain types of non-traditional assets, such as loan participations, whole loans, over-the-counter derivative contracts, and investments in private equity funds or hedge funds. While an investor' interests in these assets may be recorded to an investor's account, such assets are not typically issued in certificated form or through a regulated book entry system, such as a securities depository, and thus cannot be "hel d" in custody. Such interests and the underlying assets are not readily susceptible to ordinary controls by a custodian in the same way, or to the same degree, as traditional assets such as stocks and bonds, which are handled through relatively uniform, well-recognized market facilities and processes.

Accordingly, members fully anticipate that following adoption of the Commission's proposed regulations, many investment advisers will ask their custodians to assume the "custodianship" of these non-traditional assets in order to avoid having to arrange for the required periodic audits. The Association would encourage the Commission to issue guidance concerning the types of custodial arrangements for these asset categories that will be sufficient to avoid the need for an audit and -- to the extent those arrangements would require material changes in industry practice – provide ample time for the industry to develop and implement suitable compliance mechanisms and disciplines.

Thank you for the opportunity to convey Association members' views and for including these comments in the public file in this matter. Members stand ready to confer with the Commission or the Commission staff if that would be helpful. If you wish to confer with members or if you have questions about the Association's comments, please contact the undersigned at 312.861.2620.

Sincerely yours,



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