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Office of the Secretary of the Commonwealth
ATTN: Proposed Regulations
Securities Division, Room 1701
One Ashburton Place
Boston, MA 02108

SUBMITTED VIA E-MAIL

RE: Investment Adviser Custody Requirements—950 CMR 12.205(5)
Proposal to adopt Rule 206(4)-2 under the Investment Advisers Act of 1940

To Whom It May Concern:

Thank you for the opportunity to provide feedback on the Division's proposed rule change referenced above. Though my firm, COMPASS Wealth Management, LLC, was once overseen by the Division, my firm's assets under management ultimately required COMPASS to register with the SEC and come under its supervision for the past 1½ years. However, with what is commonly referred to as "the Switch," COMPASS will return to oversight by the Division later this year. Consequently, I have had the experience of operating under the custody rules currently followed by the Division, as well as Rule 206(4)-2 (the "SEC custody rule") as implemented by the SEC.

I have structured my comments to respond to the numbered questions posed by the Division in its "Request for Comment" dated November 2, 2011.

23. The invoicing of clients, with a complete description of how their fee was calculated, provides clients with clarity on how their fee is determined and is good business practice from an adviser's perspective. However, the proposed rule does not appear to require that the invoice or statement provided to clients outline how their fee was determined, just what "the amount of the fee to be deducted" is. I would encourage the Division to expressly state that an invoice or statement provided to a client explicitly outline the calculation of their fee.

    In regard to providing an invoice or statement to the qualified custodian of the amount to be deducted from a client's account, the current proposed rule as written seems appropriate. Custodians have no apparent interest in reviewing the calculation of an adviser's client fees—they only seek the applicable account number and the fee to be deducted from that account.

24. and 25. When my firm came under the SEC's oversight, I needed to adjust my business practices so my firm would not run afoul of the then-recently introduced "SEC custody rule." According to my contract with clients, I have authority to access their non-discretionary, employer-based retirement accounts (e.g., 401(k), 403(b), and 457s) to change existing or future allocations using login credentials that they have supplied. However, I have interpreted the "SEC custody rule" to mean that if I have the potential ability to withdraw assets from one of these accounts or change

the address of record by virtue of my login access, then my firm would be deemed to have custody of those assets and be subject to the requirement for an independent auditor. The estimated annual cost of such an auditor would far exceed the revenue my firm generates from these types of accounts, making this economically unfeasible.

26. and 27. Consequently, I no longer access these accounts, inconveniencing my clients and reducing the service level they had come to expect from me. Immediately after each quarter I request statements from all of my impacted clients for their 401(k), 403(b), and 457 accounts. Unfortunately, some clients have difficulty providing these statements on a timely basis, reducing my ability to appropriately analyze their portfolios and provide them with the level of advice they deserve.

Without direct online access to clients' non-discretionary accounts, I also rely on these clients to implement recommended changes to their existing balances, as well as allocation of future contributions. Occasionally, clients do not follow through and the result is their portfolios are inconsistent with the investment strategy they have hired me to execute because I cannot make the changes for them.

From my firm's perspective, without the timely receipt of non-discretionary account statements, I am unable to include these assets in regulatory filings, which concerns me from a compliance standpoint.

Prior to the "SEC custody rule," I was able to conduct my quarterly invoicing process in one sitting since I was allowed to access clients' non-discretionary account statements online. Since then, however, quarterly invoicing occurs sporadically whenever clients forward their non-discretionary statements, leading to an extended and less efficient invoicing cycle, as well as reducing the time spent assisting my clients. My firm's cash flow is also negatively impacted.

The "SEC custody rule" is doing a disservice to clients of registered investment advisers that oversee assets in non-discretionary, employer-based retirement accounts where clients have authorized access to their accounts. Clients are inconvenienced and advisers spend needless time. If the regulatory concern is the potential for an adviser to withdraw funds or change the address of record on non-discretionary, employer-based retirement accounts, how is that different from the potential for an adviser to perform similar misdeeds from the accounts with which they maintain discretion over with their qualified custodian? The "SEC custody rule" appears to be inconsistently applied and unnecessary in terms of non-discretionary, employer-based retirement accounts.

Again, I sincerely appreciate the opportunity to provide feedback on the Division's proposed rule on custody requirements. If you have any questions or seek clarification, please do not hesitate to contact me directly.

Sincerely yours,

COMPASS Wealth Management, LLC

Louis E. Conrad II, CFA
President