

NASAA Minimum Financial Requirements For Investment Advisers
Model Rule 202(d)-1

Adopted 9/3/87; Amended 4/3/00 and 4/18/04; Amended 9/11/2011

Rule 202(d)-1 Minimum Financial Requirements For Investment Advisers

- (a) An investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:
 - (1) Advisers having custody solely due to direct fee deduction and complying with the terms described under Rule 102(e)(1)-1(b)(3) and related books and records, as described in Rule 203(a)(2), shall not be required to comply with the net worth or bonding requirements of this Rule.
 - (2) Advisers having custody solely due to advising pooled investment vehicles and complying with the terms described under Rule 102(e)(1)-1(a)(5) or Rule 102(e)(1)-1(b)(4) and related books and records, as described in Rule 203(a)(2), shall not be required to comply with the net worth or bonding requirements of this Rule.
- (b) An investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.
- (c) An investment adviser registered or required to be registered under the Act who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.
- (d) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the [Administrator] if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the [Administrator] of its financial condition, including the following:
 - (1) A trial balance of all ledger accounts;
 - (2) A statement of all client funds or securities which are not segregated;
 - (3) A computation of the aggregate amount of client ledger debit balances; and
 - (4) A statement as to the number of client accounts.
- (e) For purposes of this Rule, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.
- (f) For purposes of this Rule, "custody" is defined in Rule 102(e)(1)-1(d)(2).
- (g) For purposes of this Rule an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:
 - (1) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the

investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

- (2) the investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
 - (3) a third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.
- (h) The [Administrator] may require that a current appraisal be submitted in order to establish the worth of any asset.
- (i) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

DRAFTING COMMENTARY. This section was drawn from SEC Rule 102(3)(1)-1(a)(7). It was the intent of the Investment Adviser Net Worth/Bonding Rule Project Group that custody, including constructive custody, as used in the NASAA Model Rule be consistent with the SEC Rule. An advisor shall not be deemed as having constructive custody of a client's cash or securities, if such possession is for the sole purpose of immediately forwarding such cash or securities to a third party at the request of the client.