

NASAA Custody Requirements for Investment Advisers
Model Rule 102(e)(1)-1

*Adopted April 3, 2000, Amended 4/18/04, 9/11/05, 9/11/2011, 4/15/2013**

Rule 102(e)(1)-1 Custody of Client Funds or Securities by Investment Advisers.

- (a) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:
- (1) **Notice to [Administrator].** The investment adviser notifies the [Administrator] promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;
 - (2) **Qualified Custodian.** A qualified custodian maintains those funds and securities:
 - (A) in a separate account for each client under that client's name; or
 - (B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle
 - (3) **Notice to clients.** If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.
 - (4) **Account Statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.
 - (5) **Special rule for limited partnerships and limited liability companies.**
[ALTERNATIVE ONE] *Without gatekeeper requirement.*
If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for

* Amendments Adopted at NASAA's Spring Conference (Washington, DC)

another type of pooled investment vehicle), the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner).

[ALTERNATIVE TWO] *With additional gatekeeper requirement.*

If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle)

- (A) the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner), and
- (B) The investment adviser must:
 - (i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;
 - (ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:
 - a. determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and
 - b. forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(6) **Independent Verification.** The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the

internal control report. The written agreement must require the independent certified public accountant to:

- (A) file a certificate on Form ADV-E with the [Administrator] within 120 days of the time chosen by the independent certified public accountant in paragraph (a)(6) of this rule, stating that it has examined the funds and securities and describing the nature and extent of the examination.
- (B) notify the [Administrator] within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the [Administrator]; and
- (C) file within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:
 - (i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and
 - (ii) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:

- (A) The independent certified public accountant the investment adviser retains to perform the independent verification required by paragraph (a)(6) of this rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and
- (B) The investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

- (i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year;
- (ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and
- (iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(3) and (a)(4) of this rule.

(b) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 (“mutual fund”), the investment adviser may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this rule;

(2) **Certain privately offered securities.**

- (A) The investment adviser is not required to comply with paragraph (a)(2) of this rule with respect to securities that are:
 - (i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;
 - (ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
- (B) Notwithstanding paragraph (b)(2)(A) of this rule, the provisions of this paragraph (b)(2) are available with respect to securities held for the

account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this rule and the investment adviser notifies the [Administrator] in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

(3) **Fee Deduction.** Notwithstanding paragraph (a)(6) of this rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

- (A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;
- (B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
- (C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:
 - (i) sends the qualified custodian [sends the independent party designated pursuant to section (a)(5)(B)(ii)] an invoice or statement of the amount of the fee to be deducted from the client's account; and

If the administrator has adopted the gatekeeper requirements of sub. (a)(5) Alternative Two, this subsection should refer to the bracketed language with regard to only sending the invoice to the independent party (not directly to the custodian) who will upon approval forward the invoice to the custodian for action.

- (ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.
- (D) The investment adviser notifies the [Administrator] in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

The bracketed language in (C)(i) is to be used when the administrator adopts ALTERNATIVE TWO of sub. (a)(5).

(4) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with paragraphs (a)(3) and (a)(4) and shall be deemed to have complied with

paragraph (a)(6) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

- (A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:
 - (i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;
 - (ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50;
 - (iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in sub. (ii) follows FASB rule ASC 946-210-50-6 whereby, long and short positions representing more than 5% of the net assets of the fund must be reported as outlined in this subsection of the FASB rule. All provisions of subsection 50-6 apply to the position disclosure required on the quarterly customer statement. This is the same reporting format required by rule 13F under the Securities Exchange Act of 1934 for investment managers' annual reports.

- (B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) [and the Administrator] within 120 days of the end of its fiscal year;
- (C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;
- (D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;
- (E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or

upon removing itself or being removed from consideration for being reappointed, notify the [Administrator] within four business days accompanied by a statement that includes:

- (i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and
- (ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

- (F) The investment adviser must also notify the [Administrator] in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) **Registered Investment Companies.** The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) **Delivery to Related Persons.** Sending an account statement under paragraph (a)(5) of this rule or distributing audited financial statements under paragraph (b)(4) of this rule shall not satisfy the requirements of this rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) **Definitions.** For purposes of the rule:

(1) “Control” means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

- (A) Each of the investment adviser’s officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;
- (B) A person is presumed to control a corporation if the person:
 - (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or
 - (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities;

- (C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;
 - (D) A person is presumed to control a limited liability company if the person:
 - (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
 - (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company;
 - (iii) is an elected manager of the limited liability company; or
 - (E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.
- (2) “Custody” means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them [or has the ability to appropriate them]. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.
- (A) Custody includes:
 - (i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender within three business days of receiving them and the investment adviser maintains the records required under [Rule 203(a)-2(a)(22) or 2002 411(c)-(1)(a)(22)];
 - (ii) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser’s instruction to the custodian; and
 - (iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.
 - (B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains the records required under Rule 203(a)-2(a)(22);

(3) “Independent certified public accountant” means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

[(4) “Independent party” means a person that:

- (A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;
- (B) does not control and is not controlled by and is not under common control with the investment adviser; and
- (C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.
- (D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.]

(5) “Independent representative” means a person who:

- (A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
- (B) does not control, is not controlled by, and is not under common control with investment adviser; and
- (C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) “Qualified custodian” means the following:

- (A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
- (B) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;
- (C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer

accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

NASAA Custody Requirements for Investment Advisers
Model Rule USA 2002 411(f)-(1)

*Adopted 9/17/2008; Amended 9/11/2011, 4/15/2013**

Rule USA 2002 411(f)-(1) Custody Requirements for Investment Advisers

- (a) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:
- (1) **Notice to [Administrator].** The investment adviser notifies the [Administrator] promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;
 - (2) **Qualified Custodian.** A qualified custodian maintains those funds and securities:
 - (A) in a separate account for each client under that client's name; or
 - (B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle
 - (3) **Notice to clients.** If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.
 - (4) **Account Statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.
 - (5) **Special rule for limited partnerships and limited liability companies.**
[ALTERNATIVE ONE] *Without gatekeeper requirement.*

If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account

statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner).

[ALTERNATIVE TWO] *With additional gatekeeper requirement.* If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle),

- (A) the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner), and
- (B) the investment adviser must:
 - (i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;
 - (ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:
 - (a) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and
 - (b) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

- (6) **Independent Verification.** The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

- (A) file a certificate on Form ADV-E with the [Administrator] within 120 days of the time chosen by the independent certified public accountant in paragraph (a)(6) of this rule, stating that it has examined the funds and securities and describing the nature and extent of the examination.
- (B) notify the [Administrator] within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the [Administrator]; and
- (C) file within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:
 - (i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and
 - (ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) **Investment advisers acting as qualified custodians.** If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:

- (A) The independent certified public accountant the investment adviser retains to perform the independent verification required by paragraph (a)(6) of this rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and
- (B) The investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:
 - (i) The internal control report must include an opinion of an independent certified public accountant as to

whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year;

- (ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and
- (iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(3) and (a)(4) of this rule.

(b) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 (“mutual fund”), the investment adviser may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this rule;

(2) **Certain privately offered securities.**

- (A) The investment adviser is not required to comply with paragraph (a)(2) of this rule with respect to securities that are:
 - (i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;
 - (ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and
 - (iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
- (B) Notwithstanding paragraph (b)(2)(A) of this rule, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or

limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this rule and the investment adviser notifies the [Administrator] in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

(3) **Fee Deduction.** Notwithstanding paragraph (a)(6) of this rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

- (A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;
- (B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
- (C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:
 - (i) sends the qualified custodian [sends the independent party designated pursuant to section (a)(5)(B)(ii)] an invoice or statement of the amount of the fee to be deducted from the client's account; and

If the administrator has adopted the gatekeeper requirements of sub. (a)(5) Alternative Two, this subsection should refer to the bracketed language with regard to only sending the invoice to the independent party, not directly to the custodian, who will upon approval forward the invoice to the custodian for action.

- (ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.
- (D) The investment adviser notifies the [Administrator] in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

The bracketed language in (C)(i) is to be used when the administrator adopts ALTERNATIVE TWO of sub. (a)(5).

(4) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with paragraphs (a)(3) and (a)(4) and shall be deemed to have

complied with paragraph (a)(6) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

- (A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:
 - (i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;
 - (ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50;
 - (iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in sub. (ii) follows FASB rule ASC 946-210-50-6 whereby, long and short positions representing more than 5% of the net assets of the fund must be reported as outlined in this subsection of the FASB rule. All provisions of subsection 50-6 apply to the position disclosure required on the quarterly customer statement.

- (B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) [and the Administrator] within 120 days of the end of its fiscal year;
- (C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;
- (D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;
- (E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other

termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the [Administrator] within four business days accompanied by a statement that includes:

- (i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and
 - (ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.
- (F) The investment adviser must also notify the [Administrator] in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) **Registered Investment Companies.** The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) **Delivery to Related Persons.** Sending an account statement under paragraph (a)(5) of this rule or distributing audited financial statements under paragraph (b)(4) of this rule shall not satisfy the requirements of this rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) **Definitions.** For purposes of the rule:

(1) “Control” means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

- (A) Each of the investment adviser’s officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;
- (B) A person is presumed to control a corporation if the person:
 - (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or
 - (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities;

- (C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;
- (D) A person is presumed to control a limited liability company if the person:
 - (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
 - (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company;
 - (iii) is an elected manager of the limited liability company; or
- (E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) “Custody” means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them [or has the ability to appropriate them]. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

- (A) Custody includes:
 - (i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender within three business days of receiving them and the investment adviser maintains the records required under [Rule 203(a)-2(a)(22) or 2002 411(c)-(1)(a)(22)];
 - (ii) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser’s instruction to the custodian; and
 - (iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person

legal ownership of or access to client funds or securities.

- (B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains the records required under Rule 411(c)-1(a)(22);

(3) “Independent certified public accountant” means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

[(4) “Independent party” means a person that:

- (A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;
- (B) does not control and is not controlled by and is not under common control with the investment adviser; and
- (C) does not have, and has not had within the part two years, a material business relationship with the investment adviser.
- (D) Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.]

(5) “Independent representative” means a person who:

- (A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
- (B) does not control, is not controlled by, and is not under common control with investment adviser; and
- (C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) “Qualified custodian” means the following:

- (A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
 - (B) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;
 - (C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
 - (D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.
- (7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser. *56 Act cross reference 102(e)1-1*

NASAA Recordkeeping Requirements For Investment Advisers **Model Rule 203(a)-2**

*Adopted 9/3/87, amended 5/3/99, 4/18/04, 9/11/05, 9/11/2011, 4/15/2013**

NOTE: Italicized information is explanatory and not intended for inclusion in the rule text. Language based on the Uniform Securities Act of 1956, as amended.

Rule 203(a)-2 Recordkeeping Requirements [ALTERNATIVE 1]:

- (a) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:
1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
 2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
 3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
 4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
 5. All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.
 6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by Rule 202(d)-1 of this Act.
 7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to (A) any recommendation made or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security, provided, however, (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report,

* Amendments Adopted at NASAA's Spring Conference (Washington, DC)

analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

8. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

10. A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

i. transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

ii. transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12) the following definitions will apply. The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain

information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

- i. any person in a control relationship to the investment adviser,
- ii. any affiliated person of a controlling person and
- iii. any affiliated person of an affiliated person.

"Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 % of the voting securities of a company shall be presumed to control such company.

(C) An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. (A) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

- i. transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- ii. transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- i. its total sales and revenues, and
- ii. its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13) the following definitions will apply. The term

"advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such the recommendations or of the information concerning the recommendations:

- i. any person in a control relationship to the investment adviser,
- ii. any affiliated person of a controlling person and
- iii. any affiliated person of an affiliated person.

"Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 203(b)1 of this Act, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate

of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

19. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in subdivision (a)(12)(A) of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

22. Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt the adviser shall keep the following records:

A ledger or other listing of all securities or funds held or obtained, including the following information:

(A) Issuer;

(B) Type of security and series;

(C) Date of issue;

(D) For debt instruments, the denomination, interest rate and maturity date;

(E) Certificate number, including alphabetical prefix or suffix;

(F) Name in which registered;

(G) Date given to the adviser;

(H) Date sent to client or sender;

(I) Form of delivery to client or sender, or copy of the form of delivery to client or sender;

(J) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and

(K) Date each check was received by the adviser.

23. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under NASAA Model Rule 102(e)((1)-1(b)(2), the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) 1. If an investment adviser has custody, as that term is defined in NASAA Model Rule 102(e)(1)-1(d)(2), of the NASAA Custody Rules, the records required to be made and kept under paragraph (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) Copies of confirmations of all transactions effected by or for the account of any client.

(E) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

2. If an investment adviser has custody because it advises a pooled investment vehicle, as defined in Rule 102(e)(1)-1(d)(2)(A)(iii), the adviser shall also keep the following records:

(A) True, accurate and current account statements;

(B) Where the adviser complies with Rule 102(e)(1)-1(b)(4) the records required to be made and kept shall include:

- i. the date(s) of the audit;
- ii. a copy of the audited financial statements; and
- iii. evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with rule 102(e)(1)-1(a)(5) the records required to be made and kept shall include:

- i. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
- ii. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

2. Partnership articles and any amendments, articles of incorporation, charters, minute

books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
 4. Books and records required to be made under the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.
 5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and (B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subdivision (e) of this Rule.
- (f) An investment adviser subject to subsection (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the [Administrator] in writing of the exact address where the books and records will be maintained during the period.
- (g) 1. Pursuant to Rule 203(a)2 (e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:
- (A) Paper or hard copy form, as those records are kept in their original form; or
 - (B) Micrographic media, including microfilm, microfiche, or any similar medium; or
 - (C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.
2. The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the [Administrator] (by its examiners or other representatives) may request:

- i. A legible, true, and complete copy of the record in the medium and format in which it is stored;
- ii. A legible, true, and complete printout of the record; and
- iii. Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the [Administrator] (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

- (h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- (i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.
- (j) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

Rule 203(a)-2 Recordkeeping Requirements [ALTERNATIVE 2] *(Language for states which incorporate by reference Rule 204-2 of the Investment Advisers Act of 1940)*

- (a) *[Every investment adviser registered or required to be registered under this Act shall make and keep true, accurate and current the following books, ledgers and records:]*

13. For investment advisers who have custody, as that term is defined in Rule 102 (e) (1) -1 (d) (2), of client funds or securities, all records and evidence of compliance required by

Rule 206(4)-2 under the Investment Advisers Act of 1940.

- (b) Every investment adviser subject to subsection (a) of this rule shall preserve for the period described in subdivision (e) of this Rule the following records in the manner prescribed:
1. Books and records required to be made under the provisions of paragraph (a)(1) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
 2. Books and records required to be made under the provisions of paragraphs (a)(2)-(a)(13), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.
 3. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
 - (A) records required to be preserved under
 - i. paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)),
 - ii. paragraphs (a)(9)-(11) of this Rule; and
 - (B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.
- (c) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the [Administrator] for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.
- (d) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements.

NASAA Recordkeeping Requirements for Investment Advisers
Model Rule USA 2002 411(c)-1
*Adopted 9/17/2008; Amended 9/11/2011, 4/15/2013**

NOTE: Italicized information is explanatory and not intended for inclusion in the rule text.

Rule USA 2002 411(c)-1 Recordkeeping Requirements [ALTERNATIVE 1]:

(a) Every investment adviser registered [licensed] or required to be registered [licensed] under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business.
- (6) All trial balances, financial statements and internal audit working papers relating to the investment adviser's business.
- (7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:
 - (A) any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) any receipt, disbursement or delivery of funds or securities, or
 - (C) the placing or execution of any order to purchase or sell any security, provided, however,
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment

advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subsection (12) the following definitions will apply;

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities

recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

- a. any person in a control relationship to the investment adviser,
- b. any affiliated person of a controlling person and
- c. any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 % of the voting securities of a company shall be presumed to control such company.

(C) An investment adviser shall not be deemed to have violated the provisions of this subsection (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) (A) Notwithstanding the provisions of subsection (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

- (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- (i) its total sales and revenues, and
- (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subsection (13) the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such the recommendations or of the information concerning the recommendations:

- a. any person in a control relationship to the investment adviser,
- b. any affiliated person of a controlling person and
- c. any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(D) An investment adviser shall not be deemed to have violated the provisions of this subsection (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 411(g) of the Act, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940. For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return

of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in subsection (a)(12)(B) of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs Form U4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt the adviser shall keep the following records:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- (A) Issuer;
- (B) Type of security and series;
- (C) Date of issue;
- (D) For debt instruments, the denomination, interest rate and maturity date;
- (E) Certificate number, including alphabetical prefix or suffix;
- (F) Name in which registered;
- (G) Date given to the adviser;
- (H) Date sent to client or sender;
- (I) Form of delivery to client or sender, or copy of the form of delivery to client or sender;
- (J) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and
- (K) Date each check was received by the adviser.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 411(f)-1(b)(2), the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) (1) If an investment adviser has custody, as that term is defined in Rule 411(f)-1(d)(2), the records required to be made and kept under paragraph (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) Copies of confirmations of all transactions effected by or for the account of any client.

(E) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) True, accurate and current account statements;

(B) Where the adviser complies with Rule 411(f)-1(b)(4) the records required to be made and kept shall include:

- (i) the date(s) of the audit;
- (ii) a copy of the audited financial statements; and
- (iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with rule 411(f)-1(a)(5) the records required to be made and kept shall include:

- (i) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
- (ii) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

- (1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
- (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

- (1) All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.
- (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
- (3) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter,

bulletin, or other communication including by electronic media.

(4) Books and records required to be made under the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsection (e) of this Rule.

(f) An investment adviser subject to subsection (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the [Administrator] in writing of the exact address where the books and records will be maintained during the period.

(g) (1) Pursuant to Rule 411(c)-1(e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) Paper or hard copy form, as those records are kept in their original form; or

(B) Micrographic media, including microfilm, microfiche, or any similar medium; or

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the [Administrator] (by its examiners or other representatives) may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the [Administrator] (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

(j) Every investment adviser registered [licensed] or required to be registered [licensed] in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is registered or licensed in such state and is in compliance with such state's recordkeeping requirements.

Rule USA 2002 411(c)-1 Recordkeeping Requirements [ALTERNATIVE 2] (*Language for states which incorporate by reference Rule 204-2 of the Investment Advisers Act of 1940*)

(a) Every investment adviser registered [licensed] or required to be registered [licensed] under this Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) Those books and records required to be maintained and preserved in compliance with Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)), notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(2) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 202(d)-1.

(3) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.

(4) A copy in writing of each agreement entered into by the investment adviser with any client.

(5) A file containing a copy of each record required by Rule 204-2(11) of the Investment Advisers Act of 1940 including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser)

(6) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 411(g) of the Act and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(7) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(8) All records required by Rule 204-2(16) of the Investment Advisers Act of 1940 including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser).

(9) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(10) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(11) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(12) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(13) For investment advisers who have custody, as that term is defined in Rule 411(f)-1(d)(2), of client funds or securities, all records and evidence of compliance required by Rule 206(4)-2 under the Investment Advisers Act of 1940.

(b) Every investment adviser subject to subsection (a) of this rule shall preserve for the period described in subsection (e) of this Rule the following records in the manner prescribed:

(1) Books and records required to be made under the provisions of paragraph (a)(1) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(2) Books and records required to be made under the provisions of paragraphs (a)(2)-(a)(13), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(3) Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) records required to be preserved under

i. paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940.

ii. paragraphs (a)(9)-(11) of this Rule; and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

(c) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the [Administrator] for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is registered or licensed in such state and is in compliance with the state's recordkeeping requirements.

(e) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Books and records required to be made under the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on

such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) (A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsection (e) of this Rule.

56 Act cross reference 203(a)-2