

**AMENDMENTS TO MODEL CUSTODY AND RECORDKEEPING RULES
UNDER THE UNIFORM SECURITIES ACTS OF 1956 AND 2002
TO CLARIFY REQUIREMENTS RELATING TO
INADVERTENT CUSTODY OF CLIENT FUNDS
Adopted 04/15/2013**

On April 15, 2013, the North American Securities Administrators Association, Inc. (“NASAA”) approved proposed changes to the model custody and model recordkeeping rules. The changes are designed to (1) resolve an inconsistency in the rules related to inadvertent custody of client funds and (2) more closely align the language of the recordkeeping rule to the language of the custody rule. Specifically, the changes modify Model Rule 102(e)(1)-1 and Rule USA 2002 411(f)-(1) (the “model custody rules”) promulgated pursuant to the 1956 and 2002 Uniform Securities Acts respectively, and Rule 203(a)-2(a) (Alternative 1) and Rule USA 2002 411(c)-1 (Alternative 1) (the “model recordkeeping rules”¹), also pursuant to the 1956 and 2002 Acts, respectively.

The amendments appear in the enclosed redline document and, effective as of 04/15/2013, modify the following documents currently available on the NASAA website:

[NASAA Custody Requirements for Investment Advisers Model Rule 102\(e\)\(1\)-1, under the 1956 Uniform Securities Act.](#)

[NASAA Recordkeeping Requirements For Investment Advisers Model Rule 203\(a\)-2, under the 1956 Uniform Securities Act.](#)

[Investment Adviser Model Rules Under the USA 2002](#) (includes both NASAA Custody and Recordkeeping Model Rules under the Uniform Securities Act of 2002).

The amendments will be incorporated into the above documents by April 30, 2013. Until then, please use the enclosed redline when accessing the above documents to read the amended version of these rules as they became effective as of April 15, 2013.

¹ Both model recordkeeping rules include an Alternative 2 which provides language for states which incorporate by reference Rule 204-2 of the Investment Advisers Act of 1940. The language regarding inadvertent custody of client’s funds only occurs in Alternative 1 of the model recordkeeping rules.

Amendments to NASAA Model Custody and Recordkeeping Rules, Effective 04/15/2013:

Rule 102(e)(1)-1(d)(2)(a) and 2002 411(f)-1(d)(2)(A):

(A) Custody includes:

- (i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender ~~promptly but in any case~~ 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 partner 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.

Rule 203(a)-2(a)(22) and 2002 411(c)-(1)(a)(22):

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 ~~third party~~ checks drawn by clients and made payable to third parties within ~~24 hours~~ three business days of receipt the adviser ~~will be considered as not having custody but~~ shall keep the following records ~~relating to the inadvertent custody~~:

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, sender, or third party;
- (I) Form of delivery to client, sender, or third party, or a copy of the form of delivery to client, sender or third party; ~~and~~
- (J) Mail confirmation number, if applicable, or confirmation by client, sender or third party of the fund's or security's return; and
- (K) Date each check was received by the adviser.