Article 6: Registration of Investment Advisers and Notice Filing of Federal Covered Advisers

601. Definitions:

A. Custody: For purposes of this article, the Division adopts the definition contained in Rule 635(C)(1)[1].

B. Investment Adviser: In order to provide uniform interpretation of the application of federal and state adviser laws to financial planners and other persons, the Division hereby expressly adopts S.E.C. Release No. IA-1092 (17 C.F.R. 276.1092), as it relates to the definition of Investment Adviser set forth in Section 75-71-105(g) of the Act.

~~601. Definition of~~ Investment Adviser: In order to provide uniform interpretation of the application of federal and state adviser laws to financial planners and other persons, the Division hereby expressly adopts S.E.C. Release No. IA-1092 (17 C.F.R. 276.1092), as it relates to the definition of Investment Adviser set forth in section 75-71-105(g) of the Act.

602. Electronic Filing with Designated Entity: (adopted March 2, 2001)

A. Pursuant to the Act, the Division designates the web-based Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Division.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, notices, related filings, and fees required to be filed with the Division pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

1. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant himself or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.
2. Solely for purposes of a filing made through IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by IARD on behalf of the Division.

C. Notwithstanding subsection B, of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees.

---

[1] NASAA Model Rule 102(e)(1)-1(c)(1) "Custody Definition"

Any documents or fees required to be filed with the Division that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Division.

D. An investment adviser shall be deemed to have fulfilled the requirement of filing a Consent to Service of Process with the Division upon completing and filing the relevant portion of the revised Form ADV.

E. Investment advisers licensed under the Act, or required to be licensed under the Act, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from filing electronically with IARD. To request a temporary hardship extension, the investment adviser must:

   1. File Form ADV-H in paper format with the Division no later than one business day after the filing that is subject of Form ADV-H was due; and
   2. Submit the filing that is the subject of Form ADV-H in electronic form to IARD no later than seven (7) business days after the filing was due.

The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year are discouraged, and may be disallowed by the Division.

F. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. To apply for a continuing hardship exemption, the investment adviser must:

   1. File Form ADV-H in paper format with the Division at least twenty (20) business days before a filing is due; and
   2. If a filing is due to more than one state, the Form ADV-H must be filed with the state where the investment adviser's principal place of business is located. The state who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H.

The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

The decision to grant or deny a request for a hardship exemption will be made by the state where the investment adviser's principal place of business is located, which decision will be conformed to by the other state(s) where the investment adviser is registered.

603. Application -Investment Adviser: (amended 3/2/01) The application for initial registration as an investment adviser pursuant to the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance

with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following:

A. A copy of the articles of incorporation or articles of limited partnership currently in effect, certified by the governmental agency where filed.
B. A surety bond as provided in Rule 605.
C. A Statement of Net Capital. Such statement shall be attested under oath by an officer of the corporation or partner, if a partnership.
D. A balance sheet prepared according to Rule 501(B)(5).
E. The $200 non-refundable statutory registration fee.
F. Reference should be made to Rule 629 for registration of investment adviser representatives.
G. Investment Adviser firms exempt under section 75-71-303 of the Act are not required to file the above information with the Division.
H. An Investment Adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of subsection D of this section, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to financial reporting.

605. Bonding Requirements for Investment Advisers:

A. Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:
    1. In an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $30,000 for investment advisers having custody of client funds and $10,000 for investment advisers with discretionary authority over client funds; and,
    2. By a bonding company qualified to do business in Mississippi.
B. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule 607.
C. An investment adviser that has its principal place of business in a state other than Mississippi and the investment adviser representatives of such investment adviser shall be exempt from the requirements of section A) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.
D. For purposes of this Rule, "custody" is defined in Rule 635(C)(1)[2]

607. Minimum Financial Requirements for Investment Advisers:

A. Unless an investment adviser posts a bond pursuant to Rule 605, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds

[2] NASAA Model Rule 102(e)(1)-1(c)(1) "Custody Definition"

or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

B. Unless otherwise exempted, as a condition of the right to continue to transact business in Mississippi, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the Division if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next day a report with the Division of its financial condition, including the following:
    1. A trial balance of all ledger accounts;
    2. A statement of all client funds or securities which are not segregated;
    3. A computation of the aggregate amount of client ledger debit balances; and
    4. A statement as to the number of client accounts.

C. For purposes of this Rule, the term **net worth** shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expenses, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

D. The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

E. Every investment adviser that has its principal place of business in a state other than Mississippi and the investment adviser representatives of such investment adviser shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed or registered in such state and is in compliance with such state's minimum capital requirements.

F. For purposes of this Rule, "custody" is defined in Rule 635(C)(1)[3]

609. Financial Reporting:

A. Each investment adviser who has custody or possession of client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of section (B).

B. The financial statements filed pursuant to this rule must:
    1. Include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles

[3] NASAA Model Rule 102(e)(1)-1(c)(1) "Custody Definition"

and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements;

2. Be prepared in accordance with generally accepted accounting principles;
3. Be audited by an independent certified public accountant. The audit must:
    a. Be made in accordance with generally accepted auditing standards;
    b. Include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;
4. Be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed;
5. Be filed with the Division within ninety (90) days following the end of the investment adviser's licensee's fiscal year.

C. An investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of section (A) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to financial reporting.

D. For purposes of this Rule, "custody" is defined in Rule 635(C)(1) [4]

611. Change of Material Information; Amendments: (amended 3/2/01)

The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

A. Change in firm name, ownership, management or control of an investment adviser, or a change in any of its partners, officers, or persons in similar positions, or its business address, or the creation or termination of a branch office in Mississippi. Notice of such change shall be filed with IARD, in accordance with the instructions in Form ADV along with a satisfactory rider or endorsement to the required surety bond.

B. Change in type of entity, general plan, or character of an investment adviser's business or method of operation.

C. Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements.

---

[4] NASAA Model Rule 102(e)(1)-1(c)(1) "Custody Definition"

D. Termination of business or discontinuance of activities as an investment adviser.
E. The naming of an investment adviser, principal, officer, and/or employee as a defendant or respondent in one of more of the following instances:
    1. Criminal allegations involving any aspect of the securities or any aspect of the securities business, or any felony.
    2. Civil allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
    3. Administrative allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
    4. Arbitration proceedings with allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
    5. Any proceeding in which an adverse decision could result in:
        a. A denial, suspension, or revocation, or the equivalent of those terms; of a license, permit, registration, or charter;
        b. The imposition of a fine or other penalty; or
        c. An expulsion or barring from membership in an association or organization.

613. Termination or Withdrawal of Registration: (amended 3/2/01)

A. Terminations or withdrawals of registration as an investment adviser shall be completed by following the instructions on Form ADV-W and filing FORM ADV-W with IARD.
B. Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, within 30 days of such cessation, file with IARD a Form ADV-W prepared in accordance with the instructions contained therein.

615. Renewal of Registration: (amended 3/2/01)

The application for annual renewal registration as an investment adviser shall be filed with IARD before December 31 of each year. The application for annual renewal registration shall include the following:

A. A copy of the surety bond required by Rule 605, if applicable; and,
B. The $200 non-refundable statutory renewal fee.

617. Record Keeping Requirements for Investment Advisers: [5]

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:

[5] NASAA Model Rule 203(a)-2 Recordkeeping Requirements

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 607 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, 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 627 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 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, and 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)(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 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 or has forwarded third party checks within 24 hours 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 or sender;
    i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
    j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

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 635(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. Additional recordkeeping requirements for advisers with custody

1. If an investment adviser has custody, as that term is defined in Rule 635(C), the records required to be made and kept under Rule 617(A) shall also 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 auditor's report and financial statements and letter 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 635(C)(1)(d), the adviser shall also keep the following records:

   a. True, accurate and current account statements;
   b. Where the adviser complies with Rule 635(B)(3) 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 635(A)(7) 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.

3. If an investment adviser has custody because it is acting as the trustee for a beneficial trust as it is described in Rule 635(B)(5) the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee.

   a. A copy of the written statement given to each beneficial owner setting forth a description of the requirements of Rule 635(A) and the reason why the adviser will not be complying with those requirements; and
   b. A written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under subsection (A) above.

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 paragraphs (A) to (C), 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)-(20), 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 Rule 617(A), 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 Division in writing of the exact address where the books and records will be maintained during the period.

G. Production of records

1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph G.2. below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

   a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,

   b. Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Division by its examiners or other representatives may request,

   c. Store separately from the original one other copy of the film or computer storage medium for the time required,

   d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

   e. With respect to records stored on photographic film, at all times have available for the Division's examination of its records pursuant to

Section 75-71-333(d) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to paragraph G(1) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

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 Mississippi 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.

K. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Rule 617, provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

L. Every investment adviser that exercises voting authority with respect to client securities shall make, maintain, and preserve records in compliance with SEC Rule 204-2(c)(2) relating to proxy voting (17 C.F.R. 275.204-2(c)(2).

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 607 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, 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 627 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 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, and 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)(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 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 or has forwarded third party checks within 24 hours 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 or sender;
    i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
    j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

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 635(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. Additional recordkeeping requirements for advisers with custody

1. If an investment adviser has custody, as that term is defined in Rule 635(C), the records required to be made and kept under Rule 617(A) shall also 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 auditor's report and financial statements and letter 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 635(C)(1)(d), the adviser shall also keep the following records:

   a. True, accurate and current account statements;

b. Where the adviser complies with Rule 635(B)(3) 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 635(A)(7) 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.

3. If an investment adviser has custody because it is acting as the trustee for a beneficial trust as it is described in Rule 635(B)(5) the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee.

a. A copy of the written statement given to each beneficial owner setting forth a description of the requirements of Rule 635(A) and the reason why the adviser will not be complying with those requirements; and
b. A written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under subsection (A) above.

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 paragraphs (A) to (C), 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)-(20), 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 Rule 617(A), 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 Division in writing of the exact address where the books and records will be maintained during the period.

G. Production of records

1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph G.2. below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

   a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,

   b. Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Division by its examiners or other representatives may request,

   c. Store separately from the original one other copy of the film or computer storage medium for the time required,

   d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

   e. With respect to records stored on photographic film, at all times have available for the Division's examination of its records pursuant to Section 75-71-333(d) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to paragraph G(1) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in

the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

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 Mississippi 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.

K. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Rule 617, provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

L. Every investment adviser that exercises voting authority with respect to client securities shall make, maintain, and preserve records in compliance with SEC Rule 204-2(c)(2) relating to proxy voting (17 C.F.R. 275.204-2(c)(2).

~~617. Record Keeping Requirements for Investment Advisers:~~

~~A. Unless otherwise provided by order of the SEC, each investment adviser registered or required to be registered under the Act shall make, maintain, and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204- 2(1996)), notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.~~

~~B. To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.~~

~~C. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of section (A).~~

~~provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.~~

619. Segregated Accounts: An investment adviser shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

A. All financial transactions between the investment adviser and his clients are to be effected through one or more bank accounts, each to be designated "special account for the exclusive benefit of clients of (name of investment adviser)"; each shall be separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and shall be subject to no right, lien, or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the investment adviser to pay operating and administrative expenses.

B. Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof.

621. Supervision:

A. All investment advisers shall establish and keep current a set of written compliance[6]-supervisory procedures, and a system for implementing such procedures, which may be reasonably expected to prevent and detect any violations of the Act and rules promulgated thereunder.

1. Procedures should include a business continuity plan generally providing for, but not limited to, protection of, back-up and recovery of books and records, establishing alternate means of communications with customers, employees, and regulators, office re-location in the event of a loss of principle place of business, and designation of duties to responsible person(s) in the event of the death or disability of a key individual, principal, owner, or other such personnel.[7]

2. A complete set of such procedures and systems shall be kept in all offices located in this state.

B. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Section (A), provided the investment adviser is licensed or registered in such state and is in

[6] "Compliance" is added to eliminate confusion for one-person offices who have no other person under their "supervision".

[7] NASD Conduct Rule 3510 "Business Continuity Plans"

compliance with such state's written compliance-supervisory procedures requirements.

621. Supervision:

A. All investment advisers shall establish and keep current a set of written supervisory procedures, and a system for implementing such procedures, which may be reasonably expected to prevent and detect any violations of the Act and rules promulgated thereunder. A complete set of such procedures and systems shall be kept in all offices located in this state.

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

623. Standards of Conduct: Investment advisers, federal covered advisers and investment adviser representatives are fiduciaries and have a duty to act primarily for the benefit of their clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or a representative and his clients and the circumstances of each case, an investment adviser, a federal covered adviser, or an investment adviser representative shall not engage in fraudulent, deceitful, unethical or dishonest business practices, including, but not limited to, the following:

A. Recommending to a client to whom investment, supervisory, management, or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, and needs, and any other information known or acquired by the investment adviser.

B. Placing an order to purchase or sell a security for the account of a client without authority to do so.

C. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

D. Borrowing money or securities from a client unless the client is a broker/dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

E. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

F. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940, (17 C.F.R. 206(4)-1), as now or hereafter amended.

G. 1. Failing to enter into a contract with any investment advisory client.
2. Entering into, extending, or renewing any investment advisory contract unless such contract is in

writing and discloses, in substance, the services to be provided, the term of the contract, the
advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the
event of contract termination or non-performance, whether the contract grants discretionary power
to the adviser, and that no assignment of such contract shall be made by the investment adviser
without the consent of the other party to the contract. No contract shall contain a "hedge clause,"
or any other language which may lead a client to believe that legal rights have been restricted or
waived.

H. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
I. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
J. Misrepresenting to any advisory client or prospective advisory client the qualifications of the investment adviser or any employee of the investment adviser; misrepresenting the nature of the advisory services being offered or fees to be charged for such service; or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.
K. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)
L. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, and the sophistication and bargaining power of the client.
M. Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including but not limited to, the following:
    1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

N. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

O. Disclosing the identity, affairs, or investments of any client to any third party, unless required by law to do so or unless consented to by the client.

P. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 635.

~~P.~~ Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of ~~Rule 206(4)-2 under the Investment Advisers Act of 1940, (17 C.F.R. 275.206 (4) 2), as now or hereafter amended.~~

Q. Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which does not comply with Rule 206(4)-3 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-3), as now or hereinafter amended.

R. Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-4), as now or hereafter amended.

S. While acting as principal for the investment adviser's own account, knowingly effecting any sale or purchase of any security for the account of a client without disclosing to such client in writing before the completion of such transaction the capacity in which the investment adviser is acting and obtaining the consent of the client to such transaction.

T. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of section 204A of the Investment Advisers Act of 1940.

U. Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

V. To indicate, in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of this act or the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

W. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the

Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

X. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder.

Y. Exercising voting authority with respect to client securities in a manner which does not comply with Rule 206(4)-6 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-6), as now or hereinafter amended.[8]

The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive or fraudulent practices shall be deemed an unethical or dishonest business practice. The standards set forth in this rule shall apply to federal covered advisers to the extent they involve conduct that is fraudulent or deceitful.

625. Commingling of Accounts Prohibited: An investment adviser engaged in more than one enterprise or activity shall maintain separate books of account and records relating to its securities business. The assets of the securities business shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.

[8] Rule 206(4)-6 of the Investment Advisers Act of 1940

627. Brochure Rule:

A. Every investment adviser shall furnish each client with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document containing at least the information so required by Part II of Form ADV. An acknowledgment of receipt of the disclosure statement must be signed by the client and kept in the client's file during the period in which services are provided the client.

B. An investment adviser shall deliver the statement required by this rule to a client:

   1. Not less than 48 hours prior to entering into any written or oral investment advisory contract with such client; or
   2. At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

C. The client shall be notified within ten (10) days of any material change in the information supplied pursuant to section (A).

D. An investment adviser shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this rule. Any statement requested in writing by an advisory client pursuant to such offer must be mailed or delivered within seven (7) days of the receipt of the request.

E. An investment adviser who is exempt from registration pursuant to the section 75-71-303(2) exception for registered broker/dealers and who is not a member of the NASD shall comply with the requirements of this rule.

F. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

629. Investment Adviser Representative: Registration, Renewal, and Withdrawal Requirements:

(amended 1/16/02)

A. Registration Requirements.

   1. Examination Requirements.

      a. Except as provided in paragraphs b), c), and d), a person applying to be registered as an investment adviser representative under the Act shall provide the Division with proof that he or she has obtained a passing score on one of the following examinations:

         i. The Uniform Investment Adviser Law Examination (Series 65 examination); or

         ii. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

b. Any individual who is registered as an investment adviser representative in any jurisdiction in the United States on January 1, 2000 shall not be required to satisfy the examination requirements for continued registration, except that the Division may require additional examinations for any individual found to have violated the Mississippi Securities Act.

c. An individual who has not yet been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.

d. The examination requirements shall not apply to any individual who holds and maintains a current professional designation from one of the following:

i. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

ii. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.

iii. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

iv. Chartered Financial Analyst (CFA) awarded by the Association of Investment Management and Research (AIMR).

v. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

vi. Such other professional designation as the Division may by order recognize.

2. Registered investment advisers shall file and amend, as needed, a completed Form U-4 on any investment adviser representative along with proof the applicant has complied with the examination requirements of paragraph 1), and a $50 non-refundable registration fee.

3. In the event an investment adviser representative is beginning an employment relationship with a federal covered adviser, the investment adviser representative shall file and amend, as needed, a completed Form U-4, along with proof of having complied with the examination requirements of paragraph 1), and a $50 non-refundable registration fee.

4. The Division is not required to issue a certificate or permit.

B. Registration renewal requirements.

1. All registrations expire on December 31 of each year.

2. To renew registration, applicant must submit the renewal fee of $50 to the Division before December 31.

C. Termination.

1. In the event an investment adviser representative terminates his relationship with an investment adviser, written notice of termination

with a statement of the reason(s) for such termination must be submitted by the investment adviser to the Division within thirty (30) days.

2. In the event an investment adviser representative terminates his relationship with a federal covered adviser, written notice of termination with a statement of the reason(s) for such termination must be submitted by the investment adviser representative to the Division within thirty (30) days.

D. Dual Registration. Applicant may associate with only one investment adviser at one time.

631. Notice Filing Requirements for Federal Covered Advisers: (amended 3/2/01)

A. The notice filing for a federal covered adviser pursuant to section 75-71-307, shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered adviser shall be deemed filed when the registration fee of $200 and the Form ADV are filed with and accepted by IARD on behalf of the Division.

B. Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered investment adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

C. Notice filing renewals.

1. The annual renewal of the notice filing for a federal covered adviser shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the renewal fee of $200 is filed with and accepted by IARD on behalf of the Division. All notice filings expire on December 31 of each year.
2. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

D. Terminations and withdrawals of notice filings shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.

E. A federal covered adviser may submit a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the federal covered adviser's term. There shall be no filing fee.

633. Promptly Remedied: For purposes of section 75-71-307 of this Act, a federal covered adviser will have "promptly remedied" a delay in payment or underpayment of fees if such federal covered adviser remits the fee payment to the Division within ten (10) business days of receipt of notification of the delay or underpayment. If such payment is not received within the ten (10) business day period, the federal covered adviser will be found to have refused to pay the fee.

635. Custody of Client Funds or Securities by Investment Advisers:[9]

A. **Safekeeping required.** If you are an investment adviser registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for you to have custody of client funds or securities unless:

1. Notice to Division. The investment adviser notifies the Division 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 your clients' funds and securities, under your name as agent or trustee for the clients.

3. Notice to clients. If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you 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.
4. Account statements must be sent to clients, either:

    a. By a qualified custodian. You have reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients 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; or
    b. By the adviser,

        i. The adviser sends an account statement, at least quarterly, to each client for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;
        ii. An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditors report and financial statements with the Division within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the

[9] NASAA Model Rule 102(e)(1)-1 Custody of Client Funds or Securities by Investment Advisers

examination; and

iii. The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Division within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division;

c. Special rule for limited partnerships and limited liability companies. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (A)(4) of this section must be sent to each limited partner (or member or other beneficial owner or their independent representative).

5. 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 section.
6. Direct Fee Deduction. An adviser who has custody as defined in Rule 635(C)(1)(c) by having fees directly deducted from client accounts must also provide the following safeguards:

a. Written Authorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
b. Notice of fee deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:

i. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and
ii. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.

c. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
d. Waiver of Net Worth or Bonding Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in Rule 635(C)(1)(c) and who complies with the safekeeping requirements in Rule 635(A)(1) through (6) will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 605, 607, and 609.

7. Pooled Investments. An investment adviser who has custody as defined in Rule 635(C)(1)(d) and who does not meet the exception provided under Rule 635(B)(3)

must, in addition to the safeguards set forth in Rule 635(A)(1) through (5) also comply with the following:

a. Engage an Independent Party. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;
b. Review of Fees. 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:

   i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and
   ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

c. For purposes of this rule, an Independent Party means a person that:

   i. Is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;
   ii. Does not control and is not controlled by and is not under common control with you; and
   iii. Does not have, and has not had within the past two years, a material business relationship with you.

d. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
e. Waiver of Net Worth or Bonding Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in 635(C)(1)(d) and who complies with the safekeeping requirements in Rule 635(A)(1) through (5) and (7) will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 605, 607, and 609.

8. Investment Adviser or Investment Adviser Representative as Trustee. When a trust retains an investment adviser, investment adviser representative, officer, or employee of the adviser as trustee and the adviser acts as investment adviser to that trust, the adviser will:

a. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
b. Invoice Requirement. The adviser will send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust, at the same time that it sends any statement to the custodian, a

statement showing the amount of the trustees' fee or investment management fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

c. Custodian Agreement: The adviser will enter into a written agreement with a qualified custodian which specifies:

i. **Payment of Fees**. The qualified custodian will not deliver trust securities to any officer or employee of the adviser, nor will it transmit any funds to the adviser or to any of its employees, except that it may pay trustees' fees to the trustee and investment management fees to the adviser, provided that:

(1) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;
(2) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and
(3) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the adviser and the amount of trustees' fees paid to the trustee.

ii. **Distribution of Assets**. Other than as set forth in subparagraph (1) below, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, or an officer or employee of the adviser) whom the qualified custodian has duly accepted as an authorized signatory for such instructions. The grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative, or an officer or employee of the adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can be made only to the following:

(1) To a trust company, bank trust department or brokerage firm independent of the adviser for the account of the trust to which the assets relate;
(2) To the named grantors or to the named beneficiaries of the trust;

(3) To a third person independent of the adviser in payment of the fees or charges of the third person, including, but not limited to, (i) attorney's, accountant's, or custodian's fees for the trust; and (ii) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;
(4) To third persons independent of the adviser for any other purpose legitimately associated with the management of the trust; or
(5) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

d. Waiver of Net Worth or Bonding Requirements. An adviser who has custody solely because it meets the definition of custody as defined in Rule 635 (C)(1)(d) and who complies with the safekeeping requirements in Rule 635 (A)(1) through (5) and the additional safeguards of Rule 635(A)(8) will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rule 605, 607, and 609 of the Act.

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 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (A) of this section;
2. Certain privately offered securities.

a. You are not required to comply with Rule 635(A) 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 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)(i) of this section, 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, the audited financial statements are distributed, as described in paragraph B(3) of this section and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as

described above. Such notification is required to be given on Form ADV.

3. Limited partnerships subject to annual audit. You are not required to comply with paragraph 635(A)(3) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Division in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.
4. Registered investment companies. You are not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].
5. Beneficial Trusts. You are not required to comply with safekeeping requirements of this Rule 635(A) or the Bonding, Net Worth and Financial Reporting Requirements of Rule 605, 607, and 609 if you have custody solely because you are the trustee for a beneficial trust, if all of the following conditions are met for each trust:

   a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the adviser. These relationships shall include "step" relationships.
   b. For each account under paragraph (i) you comply with the following:

      i. You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of Rule 635(A) of this rule and the reasons why you will not be complying with those requirements.
      ii. You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (A) above.
      iii. You maintain a copy of both documents described in subparagraphs (i) and (ii) above until the account is closed or you are no longer trustee.

6. Any adviser who intends to have custody of client funds or securities but is not able to utilize a Qualified Custodian as defined in Rule 635(C)(3) must first obtain approval from the Division and must comply with all of the applicable safekeeping provisions under Rule 635(A) including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

C. **Definitions**. For purposes of this section:

1. "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. Custody includes:

a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
b. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under Rule 617(A)22;
c. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and
d. 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 you or your supervised person legal ownership of or access to client funds or securities.

2. "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 of 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 (or members, or other beneficial owners);
b. Does not control, is not controlled by, and is not under common control with you; and
c. Does not have, and has not had within the past two years, a material business relationship with you.

3. "Qualified custodian" means the following independent institutions or entities:

a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
b. A registered broker-dealer holding the client assets in customer accounts;
c. A registered futures commission merchant register 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.