

CUSTODY AND SAFEGUARDING OF CLIENT ASSETS

Background

Definition of Custody

Rule 206(4)-2 under the Advisers Act (the “Custody Rule”) imposes certain requirements on registered investment advisers that have custody of client funds or securities. The rule defines custody as holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:

- Actual possession of client funds or securities;
- Any arrangement (including a general power of attorney) under which an adviser is authorized or permitted to withdraw client funds or securities upon instruction to a custodian;⁴
- Any capacity (such as general partner of a limited partnership, a comparable position for another type of pooled investment vehicle, or a trustee of a trust) that gives an adviser or any supervised person legal ownership of, or access to, client funds or securities; and
- Custody by a related person in connection with advisory services provided to the adviser’s clients.

General Requirements for Advisers with Custody

An investment adviser with custody of client funds or securities must implement certain procedures to safeguard those assets. The requirements imposed by the Custody Rule generally apply only to those funds or securities over which an adviser has custody, rather than all of the funds or securities under the adviser’s management. The Custody Rule generally requires an adviser with custody to:

- Provide information in Part 1A of Form ADV about its custodial arrangements;
- Maintain the clients’ funds and securities at a Qualified Custodian in the clients’ names, or in the adviser’s name as agent or trustee for the clients;
- Upon opening or changing an account on behalf of a client, notify the client in writing of the account’s custodian, the custodian’s address, and the manner in which the client’s funds or securities are maintained;⁵

⁴ In some cases, the terms of an agreement between a client and qualified custodian might permit the client’s adviser to instruct the custodian to disburse, or transfer, funds or securities.

⁵ An adviser that is required to provide written notices about account openings or changes made on behalf of clients, and that separately sends its own account statements to the affected clients, must include language in the adviser’s written notice and subsequent account statements urging the affected clients to compare the adviser’s statements to those issued by the custodian.

- Have a reasonable basis, after “due inquiry,”⁶ to believe that the Qualified Custodian sends account statements to clients at least quarterly;⁷ and
- Arrange for an independent public accountant to conduct a surprise verification of funds and securities at least annually, unless an exception is available.

Privately Offered Pooled Investment Vehicles

An investment adviser to a privately offered pooled investment vehicle that is audited by an independent public accountant need not:

- Notify clients or investors about changes to the vehicle’s custodial arrangements;
- Ensure that a Qualified Custodian is sending account statements to the investors; or
- Arrange for an independent surprise verification of the vehicle’s funds and securities.

However, these exceptions to the Custody Rule’s requirements are only available if:

- The independent public accountant is registered with, and subject to regular inspection by, the PCAOB;
- The audits are conducted annually in accordance with generally accepted auditing standards, and the audit reports are issued in accordance with generally accepted accounting principles;
- The audited financial statements are distributed to all investors within 120 days of the vehicle’s fiscal year end;⁸ and
- The vehicle is audited upon liquidation, and the audit is distributed to all investors promptly after its completion.

If an investment adviser establishes or controls a special purpose vehicle ("SPV") for certain investments of private funds it advises, the adviser must either treat the SPV as a separate client for purposes of complying with the Custody Rule or include the SPV’s assets as part of the applicable fund’s audits. If the SPV is deemed to be a Client of Maven and it has owners other than Maven, its Private Funds, or its related persons, Maven must treat the SPV as a separate Client for purposes of the Custody Rule.

Privately Offered Securities

The Custody Rule states that securities need not be held by a Qualified Custodian if they are:

⁶ The SEC has not prescribed a specific method for conducting “due inquiry.” However, the Commission indicated that receiving and, on a sample basis, testing the integrity of the addresses on duplicate statements received from a custodian would be considered due inquiry. Conversely, the Commission indicated that simply accessing account statements on a custodian’s website would not be considered due inquiry.

⁷ Account statements for a privately offered pooled investment vehicle must be delivered to the vehicle’s underlying investors unless the vehicle is audited and the audits are distributed to investors in accordance with paragraph (b)(4) of the Custody Rule.

⁸ A fund of funds, which is defined as a pooled investment vehicle that invests 10% or more of its assets in unaffiliated pooled investment vehicles, may distribute its audited financial statements within 180 days of its fiscal year end. A fund of funds of funds may distribute its audited financial statements within 260 days.

- Acquired from the issuer in a transaction not involving any public offering;
- Uncertificated and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
- Transferable only with prior consent of the issuer or holders of the issuer's outstanding securities.

Although securities that meet the preceding criteria need not be held by a Qualified Custodian, they can nonetheless trigger the Custody Rule's independent surprise verification provisions if an adviser is deemed to have custody of the securities. Also, privately offered pooled investment vehicles that hold privately offered securities must be audited, as described above, in order to rely on this exception.

In August 2013 the SEC's Division of Investment Management extended the Custody Rule's exception for privately offered securities to include certificated securities as long as all of the following conditions are met:

- The client must be a pooled investment vehicle subject to audits as described in the Custody Rule;
- The security must be transferrable only with prior consent of the issuer or holders of the issuer's outstanding securities, and the private stock certificate must contain a legend restricting transfer;
- Ownership of the security must be recorded on the books of the issuer or its transfer agent in the name of the client; and
- The private stock certificate must be appropriately safeguarded by the adviser, and must be able to be replaced upon loss or destruction.

Independent Surprise Verifications

If an adviser is deemed to have custody of client funds or securities, and is unable to rely on the exceptions described above, then the adviser must arrange for an independent public accountant to conduct a surprise verification of the funds and securities over which the adviser has custody. The verification must be conducted at least once during each calendar year at a time that is irregular from year to year, and that is chosen by the accountant without prior notice to the adviser. The independent surprise verification must also be conducted pursuant to a written agreement between the adviser and the accountant that includes specific provisions regarding filings that the accountant will make with the SEC.⁹

Books and Records Requirements

A registered investment adviser with custody of client funds or securities must maintain certain books and records, as described in the *Maintenance of Books and Records* section of this Manual.

Account Statements Sent to an Independent Representative

A client, or an investor in a pooled investment vehicle, may designate an independent representative to receive notices and statements on the client or investor's behalf. Any such independent representative must

⁹ The particular provisions that must be included in the written agreement between the adviser and the accountant are described in paragraph (a)(4) of the Custody Rule.

not be affiliated with the adviser, and must not have had a material business relationship with the adviser during the past two years.

Inadvertent Receipt of Client Funds or Securities

An adviser will not be deemed to have custody solely because it inadvertently receives client funds or securities, so long as the adviser returns the funds or securities to the sender promptly, but in any case within three business days of receipt. In an SEC staff letter issued to the Investment Adviser Association on September 20, 2007, the Division of Investment Management noted that it would not recommend enforcement action against an adviser that has inadvertently received client funds or securities despite its use of reasonable best efforts to direct third parties to deliver client funds or securities to its clients or Qualified Custodians, and that has promptly forwarded such client funds or securities to the appropriate client or Qualified Custodian, rather than to certain senders.¹⁰ For example, a class action settlement inadvertently delivered to an adviser could be forwarded to the appropriate client or Qualified Custodian, rather than being returned to the settlement administrator. An investment adviser relying on this SEC staff letter must adopt and implement policies and procedures to:

- Promptly identify inadvertently received client funds or securities;
- Promptly identify the client or former client to whom such funds or securities are attributable;
- Promptly, but in any case within five business days following receipt, forward the funds or securities to the client, former client, a Qualified Custodian, or the original sender, as appropriate; and
- Maintain and preserve appropriate records of all inadvertently received client funds or securities, including a written explanation of whether and when the funds or securities were forwarded to the client, former client, Qualified Custodian, or original sender, as applicable.

Also, an adviser will not be deemed to have custody of client funds or securities because of its inadvertent receipt of a check made out to a Qualified Custodian or other unaffiliated third party. Nonetheless, an adviser should promptly forward any checks made out to third parties to the appropriate recipient.

Risks

In developing these policies and procedures, Maven considered numerous risks associated with the Custody Rule and the protection of Client assets. This analysis includes risks such as:

- Client assets are lost or misappropriated;
- Maven is deemed to have custody of Client funds or securities, but the Company and/or its Employees are unaware of the associated compliance obligations imposed by the Custody Rule; and

¹⁰ The SEC staff notably limited the relief to the following three specific circumstances: (1) when the Internal Revenue Service or a state or other governmental tax authority sends client tax refunds to the adviser; (2) when administrators of funds established to distribute the settlement proceeds of class action lawsuits or other legal actions send client settlement assets to the adviser (including fair funds distributions); and (3) when the adviser receives stock certificates or dividend checks in the name of their client, including in connection with certain class action lawsuits involving bankruptcy or as a result of business reorganizations.

- Maven lacks internal controls that are reasonably designed to prevent and detect any loss or misappropriation of Client assets.

Maven has established the following guidelines to mitigate these risks.

Policies and Procedures

Custody by Maven and Qualified Custodians

Maven is deemed to have custody of the Private Funds' assets because of the authority that Maven and its affiliated entities have over those assets. The CCO is responsible for overseeing the audits of the Private Funds and any associated special purpose vehicles, as well as the distribution of the audited financial statements to all Investors within 120 days of the Private Funds' fiscal year ends.

If Maven establishes or controls an SPV for certain investments of a Private Fund, it will make a determination with Outside Counsel whether it needs to either i) treat the SPV as a separate client for purposes of complying with the Custody Rule or ii) include the SPV's assets as part of the applicable Private Fund's audits.

Maven will maintain Client cash and securities at unaffiliated Qualified Custodians.

Maven may have physical custody of, or access to, certain privately offered stock certificates. Should this occur, the CCO will ensure that these certificates meet the exemption discussed above.

Inadvertent Receipt of Client Funds or Securities

If any Employee inadvertently receives Client funds or securities, such as a stock certificate or a check incorrectly made out to Maven, the Employee must deliver the assets to the Controller who will notify the Managing Partners and the CCO by the close of business. The CCO will promptly, but in any case within three business days, send the funds or securities to the Client, the Client's Qualified Custodian, or the sender, as appropriate to most effectively protect Client funds or securities. The CCO may void out checks incorrectly made out to Maven prior to returning them to the sender. The CCO will instruct the sender that any future deliveries of Client funds or securities should be made directly to the Client or to the Client's Qualified Custodian. The CCO will use a log or similar documentation to document the receipt and forwarding or return of any such assets.

Private Fund Capital Controls

Maven maintains a *Cash and Related Accounting Policies* document as well as an *Accounts Payable Memo*. These documents contain controls to ensure that Client assets are sufficiently protected.