

**WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust.** (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (6)(a)(iii), you must, in addition to complying with the requirements set forth in WAC 460-24A-105, either:

(a) **Engage an independent party to authorize withdrawals from the pooled account.**

(i) You must enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **Provide audited financial statements of the pooled investment vehicle to all limited partners or members.**

(i) You must cause the financial statements of the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards. The financial statements must be prepared in accordance with generally accepted accounting principles in the United States;

(ii) You must distribute the audited financial statements to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within one hundred twenty days of the end of the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you;

(iii) You must distribute, upon liquidation, the fund's final audited financial statements prepared in accordance with generally accepted accounting principles in the United States to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of the pooled investment vehicle. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the requirements in (b)(i) and (ii) of this subsection;

(2) **You must deliver account statements to each limited partner (or member or other beneficial owner).** If you are an investment adviser registered or required to be registered under RCW 21.20.040 and you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(a) and (b)(i):

(i) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing net asset value of the fund at the end of the quarter based on the fund's governing documents;

(ii) A listing of the fund's long and short positions, including cash equivalent positions, on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(3) **If you engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC 460-24A-005 (6)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(4) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) 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 if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 (6)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 19-03-133, § 460-24A-107, filed 1/18/19, effective 2/18/19; WSR 14-13-068, § 460-24A-107, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050 - [21.20].060. WSR 08-18-033, § 460-24A-107, filed 8/27/08, effective 9/27/08.]