



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Financial Institutions, Securities Division

- Permanent Rule**
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The Securities Division is revising the requirements for investment advisers that have custody of client funds or securities set forth in WAC 460-24A-105 and codifying the requirements for investment advisers that have custody because they have the authority to deduct fees from client accounts, they manage a pooled investment vehicle or trust, or they act as trustee and investment adviser to a trust. In addition, the Division is adopting a set of related definitions and certain exceptions from the custody requirements.

Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 460-24A-105, 460-24A-170
 Suspended:

Statutory authority for adoption: RCW 21.20.450, 21.20.900, 21.20.100, 21.20.050-.060

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-10-081 on May 6, 2008 (date).

- Describe any changes other than editing from proposed to adopted version: See one-page attachment.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: Not applicable

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: August 27, 2008

NAME (TYPE OR PRINT)

Scott Jarvis

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: August 27, 2008
 TIME: 3:32 PM

WSR 08-18-033

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in the agency's own initiative:

New	<u>5</u>	Amended	<u>2</u>	Repealed	_____
-----	----------	---------	----------	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>5</u>	Amended	<u>2</u>	Repealed	_____

Attachment

In response to comments received from Aaron Westlund, Manager of Poorman Creek Capital Advisors, LLC, and Marin E. Gibson, Managing Director and Counsel, State Government Affairs, Securities Industry and Financial Markets Association, the text of the rules adopted by the Division vary from that proposed at WSR 08-10-081 as follows:

- The introductory clauses of proposed WAC 460-24A-105 through -109 were revised to clarify that these rules apply only to investments advisers registered or required to be registered under RCW 21.20.040;
- The text of proposed WAC 460-24A-105(2)(a)(ii) was revised to clarify that client funds and securities may be held in segregated accounts in the name of pooled investment vehicles;
- The text of proposed WAC 460-24A-105(2) was revised to clarify that “financial institutions,” rather than just banks, may serve as qualified custodians;
- The text of proposed WAC 460-24A-105(3) was revised to clarify that investment advisers registered or required to be registered with the Division must notify their clients who beneficially own interests in pooled investment vehicles of the name of the qualified custodian;
- The text of proposed WAC 460-24A-105(4)(b)(i) was revised to clarify that account statements are required no less often than quarterly but investment advisers may voluntarily provide account statements more frequently;
- The text of proposed WAC 460-24A-105(4)(b)(ii) was revised to replace “examination report and financial statements” with “special examination report” with the intent of eliminating any confusion that may lead to the misinterpretation of this section to require the filing of a full set of audited financial statements;
- The text of proposed WAC 460-24A-107(1)(b) was revised to clarify that it is the financial statements of the pooled investment vehicle that are subject to audit; and
- The text of proposed WAC 460-24A-107(1) was revised to clarify that the requirements of that rule must be satisfied “unless provided otherwise in this chapter.”