

CHAPTER 15
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

781—15.1(12B) Scope.

15.1(1) Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. A public funds custodial agreement is defined in Iowa Code section 12B.10C as any contractual agreement pursuant to which one or more persons including, but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments.

15.1(2) These rules shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for the investment of public funds. Public funds are defined in Iowa Code section 12C.1(2) “b” as moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in Iowa Code section 12C.1(1); a legal or administrative entity created pursuant to Iowa Code chapter 28E; or an electric power agency as defined in Iowa Code section 28F.2.

15.1(3) A public unit may only enter into a contractual arrangement pursuant to which a person is authorized to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments (including the safekeeping of investments owned by a public unit) if that person is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa. Provided, however, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal or state laws. Each public unit whose investments involve the use of a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 15.2(12B) of this chapter.

15.1(4) Investments of public funds invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to these rules.

15.1(5) The public safety peace officers’ retirement system governed by Iowa Code chapter 97A, the Iowa public employees’ retirement system governed by Iowa Code chapter 97B, investments by the Iowa finance authority governed by Iowa Code chapter 16, the state fire and police retirement system governed by Iowa Code chapter 411, and the judicial retirement system governed by Iowa Code chapter 602, article 9, are not subject to these rules. These rules also do not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of any of the entities specified in this section.

15.1(6) These rules do not apply to custodial agreements between an open-end management investment company registered with the Federal Securities Exchange Commission under the Federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

15.1(7) These rules do not apply to custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

15.1(8) These rules do not apply to Treasury Direct accounts established by a public unit with a Federal Reserve Bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

781—15.2(12B) Required provisions for inclusion in public funds custodial agreements. All public funds custodial agreements shall be in writing and shall include the following provisions:

15.2(1) The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such a custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

15.2(2) The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, and securities valuation services.

15.2(3) The custodian shall agree to provide the public unit with receipts, advices or other written confirmation or acknowledgment of its custody, on behalf of the public unit, of all assets delivered to it for the account of the public unit and subject to the public funds custodial agreement.

15.2(4) The custodian shall agree to segregate public funds assets separate from bank assets and to maintain records adequate to describe the fiduciary capacity of the custodian and the ownership of the assets by the public unit.

15.2(5) The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of the assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

15.2(6) The custodian shall agree that all records of investment transactions, documentation, orders and reports, whether in written or machine-readable form, relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records are maintained by others, the custodian shall agree to obtain from the other person an identical right to examination and inspection of the records and to obtain the information and records upon request of the public unit and to enforce its rights in order to obtain any records held by another person. The custodian shall agree to make all such records available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements.

15.2(7) If the custodian proposes to use a subcustodian or other agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts or omissions of any subcustodians or other agent used as though the acts and omissions of any subcustodian or agent were the acts and omissions of the custodian.

15.2(8) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of assets held on account of the public unit, the total amount payable on the purchase as set forth in the instructions received by the custodian. The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.

15.2(9) The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

15.2(10) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control

policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

15.2(11) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the treasurer of the public unit, or other employees designated by the treasurer, consistent with the internal controls established by the public unit.

15.2(12) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. At a minimum, these procedures must certify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

15.2(13) At a minimum, the public funds custodial agreement shall require the custodian to furnish the following reports to the public unit: A monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month; other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation; and written notice to the public unit within 30 days of receipt of all communications from the person performing the audit of the custodian or any regulatory authority of a material weakness in internal control structure, or regulatory orders or sanctions against the custodian, with regard to the services being performed under the public funds custodial agreement.

15.2(14) The custodian shall agree to furnish to the public unit the audited financial statements and related report on internal control structure as required by Iowa Code section 11.6(1)“b”(2) as amended and recodified from time to time.

15.2(15) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

15.2(16) The custodian shall agree to comply with all applicable federal laws and regulations and all applicable laws and administrative rules of the state of Iowa, including all amendments to laws, regulations and rules adopted following the execution and delivery of the public funds custodial agreement at any time during the term of the public funds custodial agreement.

15.2(17) The public funds custodial agreement shall require that all investments shall be made in accordance with the laws of the state of Iowa, as then in effect.

15.2(18) At a minimum, the custodian shall agree to exercise the standard of care expected of a prudent professional custodian of public funds in holding, maintaining and servicing the securities and cash under the public funds custodial agreement.

15.2(19) The provisions described in these rules shall not be limited or avoided by other contractual provisions in the public funds custodial agreement.

15.2(20) Any provisions limiting the liability of the custodian shall not relieve the custodian of liability as a result of its own negligence, lack of good faith or willful misconduct.

15.2(21) If the custodian intends to perform services pursuant to the public funds custodial agreement in its safekeeping department, the custodian shall represent and warrant that it performs similar services for other customers in its safekeeping department.

781—15.3(12B) Optional provisions which public units should consider. The provisions set forth in rule 15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian pursuant to the agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations

and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

781—15.4(12B) Custodial functions. The required provisions contained in rule 15.2(12B) address only custodial functions and do not purport to address discretionary authority pertaining to the investments which shall be set forth in a separate written contract with the investment manager or advisor.

781—15.5(12B) Implementation deadline. Public units shall have until January 31, 1993, to incorporate the required provisions contained in rule 15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 15.2(12B).

These rules are intended to implement Iowa Code section 12B.10C.

[Filed emergency 9/1/92—published 9/30/92, effective 9/1/92]

[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]

[Filed 10/5/95, Notice 8/30/95—published 10/25/95, effective 11/30/95]