

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 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, reporting, and securities valuation services.

15.2(3) The custodian shall agree to provide the public unit with written confirmation of its custody, on behalf of the public unit, of all assets subject to the public funds custodial agreement.

15.2(4) The custodian shall agree to segregate the public fund's assets from the custodian's own assets and to maintain records adequate to describe the public unit's ownership of or beneficial interest in the assets held by the custodian.

15.2(5) The custodian shall agree to maintain and make available to the public unit, its employees and its designees accurate, current, and complete records that sufficiently and properly document the custodian's performance under the public funds custodial agreement, including records that document all fees and other amounts charged and all transactions occurring during the term of the agreement. The custodian shall, at a minimum, agree to allow the public unit or its designees, at no charge, to access, examine and audit any directly pertinent records of the custodian relating to or created as a result of the public funds custodial agreement.

15.2(6) If the custodian proposes to use a subcustodian to perform any services in connection with the public funds custodial agreement, the custodian shall agree to take appropriate action to recover losses incurred by the public unit as a result of the acts or omissions of any subcustodian.

15.2(7) The custodian shall settle all transactions on a payment-versus-delivery settlement basis except those specifically exempted in the agreement or unless such settlement is not market practice or unless otherwise directed by the public unit.

15.2(8) 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(9) 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 public unit, its employees or designees, consistent with the internal controls established by the public unit.

15.2(10) 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. These procedures must specify 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(11) The public funds custodial agreement shall require the custodian to furnish a monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation. In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit (within a time period acceptable to the public unit) of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which

indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial agreement. The custodian shall include in the written notice a detailed description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

15.2(12) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

15.2(13) The custodian shall agree to comply with all applicable federal, state, and local laws and rules when performing within the scope of the public funds custodial agreement.

15.2(14) At a minimum, the custodian shall agree to exercise the standard of care expected of a professional custodian of public funds in holding, maintaining and servicing the public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement.

[ARC 1464C, IAB 5/14/14, effective 6/18/14]