

>>>FAIRVIEW FLASH REPORT <<<

SEC Division of Investment Management Issues Guidance
On Privately Offered Securities under the Custody Rule

WHAT HAPPENED?	On August 1, 2013, the SEC issued a Guidance Update related to investment adviser compliance with the custody rule with regard to maintaining non-transferable stock certificates or “certificated” LLC interests obtained in a private placement at a qualified custodian.
WHAT WAS THE GUIDANCE?	“The Division would not object if an adviser does not maintain private stock certificates with a qualified custodian, provided that: (1) the client is a pooled investment vehicle that is subject to a financial statement audit in accordance with paragraph (b)(4) of the custody rule; (2) the private stock certificate can only be used to effect a transfer or to otherwise facilitate a change in beneficial ownership of the security with the prior consent of the issuer or holders of the outstanding securities of the issuer; (3) ownership of the security is recorded on the books of the issuer or its transfer agent in the name of the client; (4) the private stock certificate contains a legend restricting transfer; and (5) the private stock certificate is appropriately safeguarded by the adviser and can be replaced upon loss or destruction.” <i>Source: IM Guidance Updated, August 2013; No. 2013-04</i>
WHAT DOES THIS MEAN FOR ME?	An adviser to a private pooled investment vehicle that holds securities which meet the criteria above could potentially hold those securities rather than maintain them at a qualified custodian. However, documentation of meeting the criteria, organized security records and securely retaining the private stock certificates would be important.