INDIANA SECRETARY OF STATE
SECURITIES DIVISION

STATEMENT OF POLICY REGARDING CUSTODY REQUIREMENTS OF INVESTMENT ADVISERS WITH STANDING LETTERS OF AUTHORIZATION ("SLOA") ARRANGEMENTS

The Indiana Secretary of State and the Securities Commissioner ("Commissioner") have determined that it is appropriate and in the public interest to issue this Statement of Policy regarding custody requirements of investment advisers with standing letters of authorization ("SLOA") arrangements established by a client with a qualified custodian.

BACKGROUND AND DISCUSSION

Investment advisers who maintain custody over client funds and securities, as defined by the SEC and used in Form ADV by investment advisers[1], take on an added responsibility for their clients and thus, additional safeguards are necessary. Ind. Code § 23-19-4-11(f) of the Indiana Uniform Securities Act ("IUSA") provides the Commissioner with the authority to prohibit, limit, or impose conditions on an investment adviser with custody of client funds or securities. Investment advisers with custody must comply with Indiana law and regulations, including: 710 Ind. Admin. Code 4-9-12, 710 Ind. Admin. Code 4-9-13, and the Statement of Policy issued on October 21, 2015. These additional requirements placed on investment advisers with custody are necessary for the protection of Indiana residents, and must be followed by any investment adviser registered in Indiana with custody of client funds or securities.

Clients of investment advisers can establish a SLOA or other similar transfer authorization instructions with their qualified custodians to grant their investment adviser the power to disburse funds to accounts specifically designated by the client. Investment advisers and their clients have implemented a wide variety of SLOA arrangements. Typically, SLOA arrangements authorize first-party and/or third-party transfers, which are beneficial to both the client and investment adviser for reasons such as efficiency and convenience. However, if an investment adviser enters into a SLOA arrangement with the client where the investment adviser is permitted to transfer the client's funds or securities to a third party's account – the investment adviser would have custody, and therefore, must comply with the existing custody requirements.

The Commissioner recognizes the additional burden placed on investment advisers with custody of client funds or securities and that SLOA arrangements may come at the request of clients as being an efficient part of their financial planning strategy.

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[1] This definition of "custody" includes situations where an investment adviser has access to a client account(s), or the ability to access a client account(s), through use of the client's username and password, as well as certain fee deduction arrangements. See: SEC FAQ Question III.1 for more guidance regarding fee arrangements and custody. https://www.sec.gov/divisions/investment/custody_faq_030510.htm

POLICY

Starting with the date of this Statement of Policy and until it is vacated by the Commissioner, if an investment adviser has custody of client funds or securities solely as a result of a third-party SLOA arrangement[2] with a client, the Securities Division will not pursue an enforcement action against that investment adviser on the basis that they failed to file an audited balance sheet under 710 Ind. Admin. Code 4-9-12(a) and (c), and/or conduct an annual surprise audit under 710 Ind. Admin. Code 4-9-13(a)(6), if all of the following conditions are met:

1. The client provides an instruction to the qualified custodian, in writing, that includes the client's signature, the third party's name, and either the third party's address or the third party's account number with a custodian to which the transfer should be directed.

2. The client authorizes the investment adviser, in writing, either on the qualified custodian's form or separately, to direct transfers to the third party either on a specified schedule or from time to time as directed by the terms of the SLOA arrangement.

3. The client's qualified custodian performs appropriate verification of the instruction, such as a signature review or other method to verify the client's authorization.

4. The investment adviser provides a written transfer of funds notice to the client promptly after each third-party transfer pursuant to the SLOA arrangement; the notice should indicate the amount, date, receiving party, and reason(s) for the transfer.

5. The client has the ability to terminate or change the instruction to the client's qualified custodian.

6. The investment adviser has no authority or ability to designate or change the identity of the third party, the address, or any other information about the third party contained in the client's instruction.

7. The investment adviser maintains records showing that the third party is not a related[3] party of the investment adviser or located at the same address as the investment adviser.

8. The client's qualified custodian sends the client, in writing, an initial notice confirming the existence and terms of the SLOA and an annual notice reconfirming this information.

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[2] An SLOA arrangement would not meet the definition of "custody" if: 1) the client's SLOA with the qualified custodian specifies the amount, payee, and timing of transfers; and 2) the investment adviser cannot provide any instructions to the qualified custodian or exercise any discretion regarding the SLOA.

[3] Please note that related party includes, but is not limited to, the investment adviser's associated persons/advisory affiliates such as officers, investment adviser representatives, administrative assistants, and/or any account that a related party has direct access to or to which they are a direct or indirect beneficiary.

9. In addition to including the client funds and securities that are subject to a SLOA that result in custody in its response to Item 9 of Form ADV and explaining the arrangement(s) in Item 15 of Form ADV Part 2, the investment adviser must include in Schedule D – Miscellaneous of Form ADV Part 1 and Item 15 of Form ADV Part 2: (a) both the amount and number of clients included in the Item 9 custody figures solely because of the SLOA(s); and (b) an attestation that the investment adviser is complying with each of the requirements and conditions enumerated in this Statement of Policy.

This Statement of Policy does not waive the requirements of 710 Ind. Admin. Code 4-9-12(b) for any investment adviser. Any investment adviser relying on this Statement of Policy to eliminate the requirement of filing an audited balance sheet under 710 Ind. Admin. Code 4-9-12(a) and (c), and/or conducting an annual surprise audit under 710 Ind. Admin. Code 4-9-13(a)(6), must be able to provide documentation, upon request, that the conditions set forth above are met.

DATED in Indianapolis, Indiana, this 4th day of October, 2018.

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CONNIE LAWSON
SECRETARY OF STATE

ALEX GLASS
SECURITIES COMMISSIONER