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

The Alabama Securities Commission ("the Commission") sets forth this Statement of Policy regarding custody as it pertains to an investment adviser's use of Standing Letters of Authorization or other similar transfer authorization arrangements (collectively, "SLOAs") under the Alabama Securities Act, as amended, ("Act") and the Alabama Securities Commission Administrative Code Rules ("Rules") promulgated pursuant to the Act, Section 8-6-23, Code of Alabama (1975). This Statement of Policy issues as a result of inquiries to the Commission and additional guidance released by the Securities and Exchange Commission (SEC) as to its interpretation of the custody rule as applied to money movement authority under SLOAs.

I. Preliminary Definitions

As used within this document, the following terms are defined as follows:

1. First-party transfer – an asset or money movement transfer between two of the client's accounts, where the client is the named account holder on both accounts and the name(s), number of account holders, SSNs, and tax IDs match exactly on both sides of the money movement.

2. Third-party transfer – an asset or money movement transfer between two accounts with different-named registrations, including movement between an individual account and a joint account.

II. "Custody" Under the Act and Rules

Alabama adopted Form ADV - Uniform Application for Investment Adviser Registration ("Form ADV") as the proper form for investment adviser registration. *See*, Rule 830-X-3-.03. Appendix C of the Form ADV provides the following definition:

Custody: Holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. You have custody if a ***related person***[1] holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients. Custody includes:

• Possession of client funds or securities (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly, but in any case within three business days of receiving them;

• Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

• Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities[2].

With regard to custody, no other provision in the Act or Rules explicitly makes the Form ADV's definition of custody inapplicable. Accordingly, the Commission applies Form ADV's definition of "custody" for purposes of this Policy Statement.

III. Analysis and SEC Guidance

As defined, custody includes arrangements under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian. SLOAs explicitly authorize the investment adviser to withdraw client funds or securities to effect either a first-party or third-party asset transfer on a recurring basis. While the client is instructing the investment adviser to execute a specific transfer of assets, the investment adviser is ultimately providing the instruction to a custodian to effect the asset transfer. Thus, an investment adviser operating under a SLOA could conceivably be deemed to have custody of client funds or securities under the Act and Rules. Investment advisers having custody of client funds or securities are subject to the provisions of Alabama's custody rule provided in Rule 830-X-3-.19, including its annual surprise independent audit requirement, unless otherwise exempted by statute or rule.

On February 21, 2017, the SEC released a "no-action" letter addressed to the Investment Adviser Association, providing additional guidance on how the SEC Custody Rule applies to third-

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[1] A related person includes, but is not limited to, the investment adviser's associated persons/ advisory affiliates such as officers, investment adviser representatives, and administrative assistants.

[2] The definition of "custody" provided in Appendix C of Form ADV comes from the SEC's Custody Rule, 17 C.F.R § 275.206(4)-2.

party money movement authority. The SEC simultaneously released an update to its Custody Rule FAQs addressing first-party money movements (*SEC Custody Rule FAQ,* Question II.4).

Pursuant to this guidance, the SEC does not interpret a SLOA authorizing first-party transfers to constitute custody, if: (1) the client's accounts are maintained at one or more qualified custodians; (2) the authorization is in writing and provided to the qualified custodian(s); and (3) the authorization is signed by the client and provided to the sending custodian stating with particularity the name and account numbers on sending and receiving accounts (including ABA routing number(s) or name(s) of the receiving custodian) such that the sending custodian has a record that the client has identified the accounts for which the transfer is being effected as belonging to the client. (*SEC Custody Rule FAQ*, Question II.4).

The SEC's no-action letter clarified that a SLOA granting third-party transfer authority is deemed custody, but outlined a set of conditions that, if followed, would relieve compliance with the surprise audit requirement of the custody rule.

The Commission may, in its discretion, adopt SEC guidance contained in interpretive releases. Specifically, Section 8-6-23, Code of Alabama (1975) provides that the Commission "may make, amend and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions" of the Act, where the Commission finds that the action is "necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions" of the Act. In prescribing such rules the Commission may cooperate with the securities administrators of the other states and the SEC "with a view to effectuating the policy of [the Act] to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable". Id. Accordingly, where guidance from the SEC aligns with the purposes intended by the policy and provisions of the Act, the Commission will consider such SEC guidance in construing terms used in the Act and the Rules[3].

The Commission determines that the guidance issued by the SEC here aligns with the purposes of the Act and is appropriate in the public interest.

IV. Statement of Policy

Investment advisers who are registered or required to be registered in Alabama who have money transfer authority due to SLOAs may rely on the provisions of this Policy Statement. An investment adviser with first-party transfer authority pursuant to a SLOA will not be deemed to have custody if:

1. the client's accounts are maintained at one or more qualified custodians;
2. the authorization is in writing and provided to the qualified custodian(s); and
3. the authorization is signed by the client and provided to the sending custodian stating with particularity the name and account numbers on sending and receiving accounts (including ABA routing number(s) or name(s) of the receiving custodian) such that the sending custodian has a record that the client has identified the accounts for which the transfer is being effected as belonging to the client.

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[3] *See, generally*, Section 8-6-23, Code of Alabama (1975).

Investment advisers with third-party transfer authority arrangements pursuant to a SLOA will be deemed to have constructive custody of client assets. Notwithstanding this view, the Commission will not require compliance with the annual surprise independent audit requirement set forth in Rule 830-X-3-.19(f) if the adviser has custody solely as a result of the SLOA and the following requirements 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 at 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.
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 and provides a transfer of funds notice to the client promptly after each transfer.
4. The client has the ability to terminate or change the instruction to the client's qualified custodian.
5. 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.
6. The investment adviser maintains records showing that the third party is not a related party of the investment adviser or located at the same address as the investment adviser.
7. The client's qualified custodian sends the client, in writing, an initial notice confirming the instruction and an annual notice reconfirming the instruction.

Further, the investment adviser shall:

1. Include the client funds and securities that are subject to a SLOA that result in custody in its response to Item 9 of Form ADV;
2. Explain the arrangement(s) in Item 15 of Form ADV Part 2; and
3. Specify 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) attest that the investment adviser is complying with each of the requirements and conditions enumerated in this policy statement.

The investment adviser shall be required to comply with all other requirements of Rule 830-X-3-.19.

Investment advisers who rely on any provision of this Statement of Policy shall keep a copy of this Statement of Policy in their records to document their reliance on it. This Statement of Policy shall remain in effect until rescinded or superseded by statute, rule, or order.

Dated this the 4th day of December, 2025.

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