

# **ACC**

# **Investment Policy**

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## **PREFACE**

It is the policy of the Austin Community College (the “College”) that all available funds shall be invested in conformance with these legal and administrative guidelines.

Effective cash management is recognized as essential to good fiscal management. An aggressive cash management and investment policy will be pursued to take advantage of investment interest as viable and material revenue to all operating and capital funds. The College’s portfolio shall be designed and managed in a manner responsive to the public trust and consistent with state and federal law.

Investments shall be made with the primary objectives of:

- Preservation of capital and protection of principal
- Maintenance of sufficient liquidity to meet operating needs
- Security of College funds and investments
- Diversification of investments to avoid unreasonable or avoidable risks
- Maximization of return on the portfolio

**SECTION I**

**PURPOSE**

## **I. Purpose**

### **A. Authorization**

This Policy is to be authorized by the College's Board of Trustees in accordance with Section 5 of the Public Funds Investment Act (Chapter 2256, Texas Government Code) which requires the adoption of a formal written Investment Policy.

### **B. Scope**

This Policy shall govern the investment of all funds of the College as entrusted to the Board of Trustees and other authorized representatives in accordance with Chapter 2256, Texas Government Code. In addition to this Policy, bond funds, including debt service and reserve funds, shall be managed by their governing resolution and federal law, including the Tax Reform Act of 1986 and subsequent legislation.

### **C. Review and Amendment**

This Policy shall be reviewed annually. Amendments must be authorized by the College's Board of Trustees.

**SECTION II**  
**INVESTMENT OBJECTIVES**

## **II. INVESTMENT OBJECTIVES**

### **A. Safety of Principal**

The College has as its foremost objective to ensure the safety of principal, considering the portfolio as a whole. The manner in which the College ensures safety of principal is presented in Section IV.B., “Ensuring Safety of Principal”.

### **B. Maintenance of Adequate Liquidity**

The College’s investment portfolio must be structured in a manner which will provide the liquidity necessary to pay obligations as they become due. Maintenance of adequate liquidity is described in Section IV.C., “Ensuring Liquidity”.

### **C. Return on Investments**

Consistent with State law, the College shall seek to optimize return on investments within the constraints of safety and liquidity. Investments (excluding assets managed under separate investment programs, such as in arbitrage restrictive programs) shall be made in permitted obligations at yields equal to or greater than the bond equivalent yield on United States Treasury obligations of comparable maturity. Other appropriate performance measures will be established by the Board of Trustees. Specific policies regarding investment rate of return are presented in Section IV.D., “Achieving Investment Return Objectives”.

For bond issues to which Federal yield or arbitrage restrictions apply, the primary objectives shall be to obtain satisfactory market yields and to minimize the costs associated with investment of such funds.

### **D. Prudence and Ethical Standards**

The standard of prudence used by the College shall be the “prudent person rule” and shall be applied in the context of managing the overall portfolio within the applicable legal constraints. The prudent person rule is restated below:

“Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence would exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

In determining whether the Investment Officer(s) or Investment Advisor under contract has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the Officer/Advisor had responsibility rather than a consideration as to the prudence of a single investment, and whether the investment decision was consistent with the written Investment Policy of the College.

Specific policies describing the College's prudence and ethical standards are found in Section IV.E., "Responsibility and Controls".

**SECTION III**  
**INVESTMENT STRATEGY STATEMENT**

### **III. INVESTMENT STRATEGY STATEMENT**

The College maintains portfolios of operating/operating reserve funds, debt service funds, debt service reserve funds and bond project construction funds.

#### **Operating/Operating Reserve Funds:**

Investment strategies for operating and operating reserve funds have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing quality, short- to medium-term securities that will complement each other in a laddered or barbell maturity structure. The dollar weighted average maturity of 548 days or less will be calculated using the stated final maturity dates of each security. Securities may not be purchased that have a final stated maturity date which exceeds five years.

#### **Debt Service Funds**

Investment strategies for debt service funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. Securities purchased shall not have a stated final maturity date that exceeds the debt service payment date.

#### **Debt Service Reserve Funds**

Investment strategies for debt service reserve funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate debt service fund from securities with a low degree of volatility. Except as may be required by the bond ordinance specific to an individual issue, securities should be of high quality, with short- to intermediate-term maturities. Volatility shall be further controlled through the purchase of securities carrying the highest coupon available, within the desired maturity and quality range, without paying a premium, if at all possible.

#### **Bond Construction or Special Purpose Funds**

Investment strategies for bond construction or special purpose fund portfolios will have as their primary objective to ensure that anticipated cash flows are matched with adequate investment liquidity. These fund portfolios should include at least 10% in highly liquid securities to allow for flexibility and unanticipated project outlays. The stated final maturity dates of securities held should not exceed the estimated project completion date.

**SECTION IV**  
**INVESTMENT POLICIES**

## **IV. INVESTMENT POLICIES**

### **A. Eligible Investments**

Investments described below are those authorized by the Public Funds Investment Act (Chapter 2256, Texas Government Code), as amended, which is included and made a part of this Policy as Appendix A. The following list may not contain all of those securities that are authorized by state statutes, but only those that the Board of Trustees wish to include in the College's portfolios. The purchase of specific issues may at times be further restricted or prohibited because of current market conditions. The College funds governed by this Policy may be invested in:

1. Obligations of the United States or its agencies and instrumentalities.
2. Direct Obligations of the State of Texas.
3. Other obligations, the principal and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States or its agencies and instrumentalities.
4. Obligations of states, agencies, counties, cities and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than A or its equivalent.
5. Bankers' Acceptances with a stated maturity of 270 days or less from the date of its issuance that will be, in accordance with its terms, liquidated in full at maturity; is eligible for collateral for borrowing from a Federal Reserve Bank; and is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.
6. Commercial paper with a stated maturity of 270 days or less from the date of its issuance that either:
  - a. Is rated not less than A-1, P-1, or the equivalent by at least two nationally recognized credit rating agencies; or,
  - b. Is rated at least A-1, P-1, or the equivalent by at least one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state thereof.

6. Fully collateralized repurchase agreements having a defined termination date, placed through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas, and secured by obligations described by 1 above (the principal and interest on which are guaranteed by the United States or any of its agencies), pledged with a third party selected or approved by the College and having a market value (including accrued interest) of no less than the principal amount of the funds disbursed.
7. Certificates of deposit issued by state and national banks domiciled in Texas that are:
  - a. guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or,
  - b. secured by obligations that are described by 1 - 4 above, which are intended to include all direct federal agency or instrumentality issues that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the College.
8. Certificates of deposit issued by savings banks domiciled in Texas that are:
  - a. guaranteed or insured by the Federal Savings and Loan Insurance Corporation or its successor; or,
  - b. secured by obligations that are described by 1 - 4 above, which are intended to include all direct federal agency or instrumentality issues that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the College.
9. Share Certificates issued by a state or federal credit union domiciled in Texas that are:
  - a. guaranteed or insured by the National Credit Union Share Insurance Fund or its successor; or,
  - b. secured by obligations that are described by 1 - 4 above, which are intended to include all direct federal agency or instrumentality issues that have a market value of not less than the principal amount of the certificates or in any other manner and amount provided by law for deposits of the College.

10. SEC-regulated, no-load money market mutual funds with a dollar-weighted average stated portfolio maturity of 90 days or less and whose investment objectives include seeking to maintain a stable net asset value of \$1 per share. No more than 25% of the College's average fund balance may be invested in money market mutual funds, and the College may not invest funds under its control in an amount that exceeds 10% of the total assets of any individual money market mutual fund. Only those mutual funds that contain 100% U.S. Treasury Securities are authorized and mutual funds will only be used in conjunction with the overnight sweep activities of the custodial bank.
11. Local government investment pools organized in accordance with the Interlocal Cooperation Act (Chapter 791, Texas Government Act) as amended, whose assets consist exclusively of the obligations that are allowed as a direct investment for funds subject to the Public Funds Investment Act (Chapter 2256, Texas Government Code). A public funds investment pool must be continuously rated no lower than AAA, AAA-m or at an equivalent rating by at least one nationally recognized rating service.
12. Cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));
13. Negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and
14. Corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Investments in collateralized mortgage obligations are strictly prohibited. These securities are also disallowed for collateral positions. The College will not be required to liquidate investments that were authorized investments at the time of purchase.

Settlement of all investment transactions, except those transactions involving investments in mutual funds or local government investment pools, must be made on a delivery versus payment basis.

## **B. Ensuring Safety of Principal**

Ensuring safety is accomplished through protection of principal and safekeeping.

### **1. Protection of Principal**

The College shall seek to control the risk of loss due to the failure of a security issuer or guarantor. Such risk shall be controlled by investing only in the safest types of securities as defined in the Policy, by qualifying the broker/dealer and financial institution with whom the College will transact, by collateralization as required by law, by portfolio diversification and by limiting maturity.

The College will seek to control the risk of loss due to failure of issuers of corporate debt and commercial paper by monitoring the ratings of portfolio positions to ensure compliance with the rating requirements imposed by the Public Funds Investment Act. Should an issuer experience a single step downgrade of its credit rating by a nationally recognized credit rating agency within 90 days of the position's maturity, the Investment Officer(s) may approve holding the corporate security or paper to maturity. If the subject corporate security or paper matures beyond the 90-day period or if the credit rating downgrade exceeds a single step, it will be the College's policy to convene an emergency meeting of the Investment Committee to determine whether liquidation of the position is warranted. This meeting should take place within 24 hours of notification or discovery of the credit downgrade.

The purchase of individual securities shall be executed "delivery versus payment" (DVP) through the Federal Reserve System. By so doing, College funds are not released until the College has received, through the Federal Reserve wire, the securities purchased.

#### **a. Approved Broker/Dealers/Financial Institutions**

Investments shall only be made with those firms and institutions who have acknowledged receipt and understanding of the College's Investment Policy. The "qualified representative" of the business as defined in Chapter 2256 of the Texas Government Code shall execute a written certification to acknowledge receipt of the College's Investment Policy and to acknowledge that the organization has implemented reasonable procedures and controls to preclude imprudent investment activities arising out of the investment transactions conducted between the entity and the College. Should the College contract with an external investment advisor to execute the College's investment strategy, including the negotiation and execution

of investment transactions, a managing officer of the investment advisory firm may sign the written certification in lieu of the broker/dealer firms. This certification must be included as part of the investment advisory contract.

Securities, certificates of deposit and share certificates shall only be purchased from those institutions included on the College's list of broker/dealers, banks, savings banks and credit unions as approved by the Investment Committee. This list of approved investment providers must be reviewed at least annually by the College's Investment Committee.

**b. Master Repurchase Agreement**

It is the policy of the College to require each issuer of repurchase agreements to sign a copy of the College's Master Repurchase Agreement. An executed copy of this agreement must be on file before the College will enter into any repurchase agreement with an issuer. (See Appendix B "Master Repurchase Agreement.")

**c. Collateralization**

Consistent with the requirements of State law, the College requires all banks, savings banks and credit union deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as College Depositories will be required to sign an Agreement with the College and its safekeeping agent for the collateral, perfecting the College's rights to the collateral in case of default, bankruptcy or closure. The College shall not accept, as depository collateral, any security that is not specifically allowed to be held as a direct investment by the College portfolio (see IV.A.). Repurchase agreements must also be collateralized in accordance with State law. Each issuer of repurchase agreements is required to sign a copy of the College's Master Repurchase Agreement. An executed copy of this agreement must be on file before the College will enter into any repurchase agreements with an issuer. (See Appendix B, "Master Repurchase Agreement".)

**(1) Allowable Collateral**

**(a) Certificates of Deposit/Share Certificates**

Eligible securities for collateralization of deposits are defined by the "Public Funds Collateral Act" (Chapter 2257, Texas

Government Code) which is included and made a part of the Policy as Appendix A. The eligibility of specific issues may at times be restricted or prohibited because of current market conditions.

**(b) Repurchase Agreements**

Collateral underlying repurchase agreements is limited to U.S. government and agency obligations, which are eligible for wire transfer (i.e. book entry) to the College's designated safekeeping agent through the Federal Reserve System.

**(2) Collateral Levels**

Collateral is valued at current market plus interest accrued through the date of valuation.

**(a) Certificates of Deposit/Share Certificates**

The market value of collateral pledged for certificates of deposit/share certificates must at all times be equal to or greater than the par value of the certificate of deposit plus accrued interest, less the amount insured by the FDIC, FSLIC or the National Credit Union Share Insurance Fund or their successors.

**(b) Repurchase Agreements**

The market value of collateral required to be pledged for repurchase agreements shall be a percentage of the par value of the agreement plus accrued interest and shall be maintained at the following levels:

<u>Collateral Maturity</u>	<u>U.S. Treasury Securities</u>	<u>U.S. Government Agency</u>
1 year or less	101 %	101 %
1 year to 5 years	102 %	102 %
Over 5 years	103 %	104 %

**(3) Monitoring Collateral Adequacy**

**(a) Certificates of Deposit/Share Certificates**

The College requires monthly reports with market values of pledged securities from all financial institutions with which the

College has certificates of deposit/share certificates. The College's Investment Advisor will at least weekly monitor the adequacy of collateral.

**(b) Repurchase Agreements**

Weekly monitoring by the College's Investment Advisor of all collateral underlying repurchase agreements is required. More frequent monitoring may be necessary during periods of market volatility.

**(4) Margin Calls**

**(a) Certificates of Deposit/Share Certificates**

If the collateral pledged for a certificate of deposit or share certificate falls below the par value of the deposit, plus accrued interest less FDIC, FSLIC or National Credit Union Share Insurance, the institution will be notified by the College or its Investment Advisor and will be required to pledge additional securities no later than the end of the next succeeding business day.

**(b) Repurchase Agreements**

If the value of the collateral underlying a repurchase agreement falls below the margin maintenance levels specified above, the College or its Investment Advisor will make a margin call unless the repurchase agreement is scheduled to mature within five business days and the amount is deemed to be immaterial.

**(5) Collateral Substitution**

Collateralized investments, certificates of deposit and share certificates often require substitution of collateral. Any broker or financial institution requesting substitution must contact the Investment Officer(s) or the external Investment Advisor under contract for approval and settlement. The substituted collateral's value will be calculated and substitution approved if its value is equal to or greater than the required value (See IV.B.1.c.(2)(b)). The Investment Officer(s) or Investment Advisor must give immediate notification of the decision to the bank or the safekeeping agent holding the collateral. Substitution is allowable for all transactions, but should be limited, if possible, to minimize potential administrative problems and transfer expense. The Investment Officer(s) or Investment Advisor may limit substitution

and assess appropriate fees if substitution becomes excessive or abusive.

**(6) Collateral Reductions**

Should the collateral’s market value exceed the required amount, any broker or financial institution may request approval from the Investment Officer(s) or the external Investment Advisor under contract to reduce collateral. Collateral reductions may be permitted only if the College’s records indicate that the collateral’s market value exceeds the required amount.

**d. Portfolio Diversification**

Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations. As discussed below, these limitations do not apply to bond proceeds.

<u>Investment Type:</u>	<u>% of Portfolio</u>
• Repurchase Agreements	50%
• Certificates of Deposit	20%
• Share Certificates	5%
• U.S. Treasury Notes/Bonds/Bills	100%
• U.S. Agencies	80%
• Money Market Mutual Funds	25%
• Local Government Investment Pools	50%
• Commercial Paper	30%
• Bankers’ Acceptance	15%
• Section 501(f) Funds	10%
• Corporate debt securities	10%
• State or municipal obligations	25%

It is the policy of the College to diversify its investment portfolio so that reliance on any one issuer or broker will not place an undue financial burden on the College. Generally, the College should limit its repurchase agreement exposure with a single firm to no more than 15% of the value of the College’s overall portfolio and its commercial paper, certificates of deposit, state or municipal obligations, corporate debt and bankers’ acceptance exposure with a single issuer to no more than 5% of the value of the College’s overall portfolio. To allow efficient and effective placement of proceeds from any bond sales, these limits may be exceeded for a maximum of five business days following the receipt of bond proceeds.

**(1) Bond Proceeds**

Proceeds of a single bond issue may be invested in a single security or investment if the Investment Committee determines that such an investment is necessary to comply with Federal arbitrage restrictions or to facilitate arbitrage record keeping and calculation.

**e. Limiting Maturity**

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Maturity guidelines by funds are as follows:

**(1) General Funds**

The dollar weighted average days to final stated maturity shall be 548 days or less. The Investment Advisor will monitor the maturity level and make changes as appropriate. The maximum maturity of any individual investment shall not exceed 5 years without prior approval from a college Investment Officer, CFO, Executive Vice President, Finance and Administration or the Associate Vice President, Finance and Budget.

**(2) Bond Proceeds, Bond Reserves, Debt Service Funds**

The investment maturity of bond proceeds (including reserves and debt service funds) shall be determined considering:

- (a) the anticipated cash flow requirements of the funds, and;
- (b) the “temporary period” as defined by Federal tax law during which time bond proceeds may be invested at an unrestricted yield. After the expiration of the temporary period, bond proceeds subject to yield restriction shall be invested considering the anticipated cash flow requirements of the funds.

**2. Safekeeping**

**a. Safekeeping Agreement**

The College shall contract with a bank or banks for the safekeeping of securities either owned by the College as a part of its investment portfolio or held as collateral to secure certificates of deposits, share certificates or repurchase agreements.

**b. Safekeeping of Certificate of Deposit/Share Certificate Collateral**

All collateral securing bank, savings banks and credit union deposits must be held by a third party banking institution approved by the College, or collateral may be held at the Federal Reserve Bank.

**c. Safekeeping of Repurchase Agreement Collateral**

The securities which serve as collateral for repurchase agreements with dealers must be delivered to a third-party custodian with which the College has established a third-party safekeeping agreement.

**C. Ensuring Liquidity**

Liquidity shall be achieved by investing in securities with active secondary markets and by investing in eligible money market mutual funds (MMMF's) and local government investment pools (LGIP's).

A security may be liquidated to meet unanticipated cash requirements, to re-deploy cash into other investments expected to outperform current holdings, or to otherwise adjust the portfolio.

**D. Achieving Investment Return Objectives**

Investment selection for all funds shall be based on legality, appropriateness, liquidity, and risk/return considerations. The portfolios shall be actively managed to enhance overall interest income. Active management will take place within the context of the "Prudent Person Rule." (see Section II.D.).

**1. Securities Swaps**

The College will take advantage of security swap opportunities to improve portfolio yield. A swap which improves portfolio yield may be selected even if the transaction results in an accounting loss.

**2. Competitive Bidding**

It is the policy of the College to require competitive bidding for all individual security purchases except for those transactions with money market mutual funds (MMMFs) and local government investment pools (LGIP's) which are deemed to be made at prevailing market rates, and for government securities purchased at issue through a primary dealer at auction price. Rather than relying solely on yield, investment in MMMFs and LGIP's shall be based on criteria determined by the Investment Committee, including adherence to Securities and Exchange Commission (SEC) guidelines for MMMFs when appropriate.

At least three bidders must be contacted in all transactions involving individual securities. Competitive bidding for security swaps is also required. Bids may be solicited in any manner provided by law. For those

situations where it may be impractical or unreasonable to receive three bids for a transaction due to a rapidly changing market environment or to secondary market availability, documentation of a competitive market survey of comparable securities or an explanation of the specific circumstance must be included with the daily bid sheet. All bids received must be documented and filed for auditing purposes.

### **3. Methods of Monitoring Market Price**

The methods/sources to be used to monitor the price of investments that have been acquired with public funds shall be from sources deemed reliable by the Investment Advisor, including primary or regional broker/dealers, market information vendors such as Bloomberg or Telerate and market pricing services.

## **E. Responsibility and Controls**

### **1. Authority to Invest**

The authority to invest the College funds and the execution of any documentation necessary to evidence the investment of the College funds is granted to the Investment Advisory firm under current contract and those College personnel authorized as Investment Officers. The College's President will designate those College personnel ("Investment Officers") authorized to invest on behalf of the College and the President's designations will be confirmed by the Board of Trustees.

### **2. Establishment of Internal Controls**

The Chief Financial Officer will establish a system of internal controls over the investment activities of the College and document such controls in the Investment Procedures Manual.

### **3. Prudent Investment Management**

The designated Investment Officers shall perform their duties in accordance with the adopted Investment Policy and procedures set forth in the Investment Procedures Manual. Investment Officers acting in good faith and in accordance with these Policies and Procedures shall be relieved of personal liability.

### **4. Standard of Ethics**

The designated Investment Officers shall adhere to the College's ethics policies.

### **5. Training and Education**

In accordance with the Public Funds Investment Act (Chapter 2256, Texas Government Code), the designated Investment Officers, or those personnel authorized to execute investment transactions, shall attend at least one investment training session annually. State law requires that training relating to investment responsibilities must be provided by an independent source as approved by the Investment Committee. Personnel authorized to execute or approve investment transactions must receive at least 10 hours of investment training within each two-year period.

## **6. Investment Committee**

An Investment Committee shall be established to determine investment guidelines, general strategies, and monitor performance. Members of the Investment Committee will include the Investment Officers and a representative of the external investment advisory firm. The Committee shall meet quarterly to review performance, strategy and procedures.

## **F. Reporting**

Investment performance is continually monitored and evaluated by the Investment Advisor. The Investment Advisor will provide detailed reports, as required by the Public Funds Investment Act (Chapter 2256, Texas Government Code), Section 2256.023, for the College President, the Chief Financial Officer, the Board of Trustees and the Investment Committee on a quarterly basis.

The report will outline conformance to the restrictions of the Policy in the area of diversification and term of maturity. The report will also compare the performance of the College's portfolio to appropriate benchmarks as determined by the Investment Committee. The report will include an economic summary discussing interest rate trends, investment strategy and any other information deemed appropriate by the Chief Financial Officer or the Investment Committee.

## **G. Compliance Audit**

In conjunction with its annual financial audit, the College shall perform a compliance audit of management controls on investments and adherence to the College's established Investment Policies. The results of the audit shall be reported to the Investment Committee and the College's Board of Trustees.

## **H. Certification**

A copy of this Investment Policy will be provided to the senior management of any bank, dealer, broker or investment advisor wishing to transact investment business directly with the College in order that it is apprised of the investment goals of the College. Before business is transacted with the

firm, a certification (Appendix C) must be signed by a senior member of a firm. Should the College contract with an external investment advisor to execute the College's investment strategy, including the negotiation and execution of investment transactions, a managing officer of the investment advisory firm may sign the written certification in lieu of the broker/dealer firms. This certification must be included as part of the investment advisory contract.

**APPENDIX A**  
**INVESTMENT LEGISLATION**

**GOVERNMENT CODE**  
**CHAPTER 2256. PUBLIC FUNDS INVESTMENT**

**SUBCHAPTER A. AUTHORIZED INVESTMENTS FOR GOVERNMENTAL ENTITIES**

**Sec. 2256.001. SHORT TITLE.** This chapter may be cited as the Public Funds Investment Act.  
Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.002. DEFINITIONS.** In this chapter:

- (1) "Bond proceeds" means the proceeds from the sale of bonds, notes, and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.
- (2) "Book value" means the original acquisition cost of an investment plus or minus the accrued amortization or accretion.
- (3) "Funds" means public funds in the custody of a state agency or local government that:
  - (A) are not required by law to be deposited in the state treasury; and
  - (B) the investing entity has authority to invest.
- (4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.
- (6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:
  - (A) preservation and safety of principal;
  - (B) liquidity; and
  - (C) yield.
- (7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the State of Texas, and any nonprofit corporation acting on behalf of any of those entities.
- (8) "Market value" means the current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.
- (9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.
- (10) "Qualified representative" means a person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:
  - (A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;
  - (B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution;
  - (C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool; or
  - (D) for an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or, if not subject to registration under that Act, registered with the State Securities Board, a person who is an officer or principal of the investment management firm.
- (11) "School district" means a public school district.

- (12) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.
- (13) "State agency" means an office, department, commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any nonprofit corporation acting on behalf of any of those entities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 1, eff. Sept. 1, 1999.

**Sec. 2256.003. AUTHORITY TO INVEST FUNDS; ENTITIES SUBJECT TO THIS CHAPTER.**

- (a) Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:
  - (1) a local government;
  - (2) a state agency;
  - (3) a nonprofit corporation acting on behalf of a local government or a state agency; or
  - (4) an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.
- (b) In the exercise of its powers under Subsection (a), the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under authority of this subsection may not be for a term longer than two years. A renewal or extension of the contract must be made by the governing body of the investing entity by order, ordinance, or resolution.
- (c) This chapter does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under this chapter.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 2, eff. Sept. 1, 1999.

**Sec. 2256.004. APPLICABILITY.**

- (a) This subchapter does not apply to:
  - (1) a public retirement system as defined by Section 802.001;
  - (2) state funds invested as authorized by Section 404.024;
  - (3) an institution of higher education having total endowments of at least \$95 million in book value on May 1, 1995;
  - (4) funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code;
  - (5) registry funds deposited with the county or district clerk under Chapter 117, Local Government Code; or
  - (6) a deferred compensation plan that qualifies under either Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.), as amended.
- (b) This subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1454, Sec. 3, eff. Sept. 1, 1999.

**Sec. 2256.005. INVESTMENT POLICIES; INVESTMENT STRATEGIES; INVESTMENT OFFICER.**

- (a) The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.
- (b) The investment policies must:
  - (1) be written;

- (2) primarily emphasize safety of principal and liquidity;
- (3) address investment diversification, yield, and maturity and the quality and capability of investment management; and
- (4) include:
  - (A) a list of the types of authorized investments in which the investing entity's funds may be invested;
  - (B) the maximum allowable stated maturity of any individual investment owned by the entity;
  - (C) for pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date for the portfolio;
  - (D) methods to monitor the market price of investments acquired with public funds; and
  - (E) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis.
- (c) The investment policies may provide that bids for certificates of deposit be solicited:
  - (1) orally;
  - (2) in writing;
  - (3) electronically; or
  - (4) in any combination of those methods.
- (d) As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:
  - (1) understanding of the suitability of the investment to the financial requirements of the entity;
  - (2) preservation and safety of principal;
  - (3) liquidity;
  - (4) marketability of the investment if the need arises to liquidate the investment before maturity;
  - (5) diversification of the investment portfolio; and
  - (6) yield.
- (e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.
- (f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.
- (g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 685, Sec. 1

- (h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be an investment officer for the commission under Subsection (f) if the officer or employee is an investment officer designated under Subsection (f) for another local government.  
Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 1421, Sec. 3
- (h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f) for any investing entity other than for that commission.
- (i) An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this subsection, an investment officer has a personal business relationship with a business organization if:
  - (1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
  - (2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or
  - (3) the investment officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the investment officer.
- (j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.
- (k) A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction with an investing entity or to an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. For purposes of this subsection, a business organization includes investment pools and an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. Nothing in this subsection relieves the investing entity of the responsibility for monitoring the investments made by the investing entity to determine that they are in compliance with the investment policy. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:
  - (1) received and reviewed the investment policy of the entity; and
  - (2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio or requires an interpretation of subjective investment standards.
- (l) The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a person who has not delivered to the entity the instrument required by Subsection (k).
- (m) An investing entity other than a state agency, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the entity's established investment policies.
- (n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. Subject to a risk assessment and to the legislative audit committee's approval of including a review by the state auditor in the audit

plan under Section 321.013, the state auditor may review information provided under this section. If review by the state auditor is approved by the legislative audit committee, the state auditor may, based on its review, require a state agency to also report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

- (o) The audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under Section 404.024.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 685, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 41, eff. Sept. 1, 2003.

**Sec. 2256.006. STANDARD OF CARE.**

- (a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment objectives, in order of priority:

- (1) preservation and safety of principal;
- (2) liquidity; and
- (3) yield.

- (b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- (1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
- (2) whether the investment decision was consistent with the written investment policy of the entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.007. INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS.**

- (a) Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.
- (b) The Texas Higher Education Coordinating Board shall provide the training under this section.
- (c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.
- (d) An investment officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 73, Sec. 1, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 5, eff. Sept. 1, 1999.

**Sec. 2256.008. INVESTMENT TRAINING; LOCAL GOVERNMENTS.**

- (a) Except as provided by Subsections (b) and (e), the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall:
  - (1) attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government and containing at least 10 hours of instruction relating to the treasurer's or officer's responsibilities under this subchapter within 12 months after taking office or assuming duties; and

- (2) except as provided by Subsections (b) and (e), attend an investment training session not less than once in a two-year period and receive not less than 10 hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.
- (b) An investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds may satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period. The treasurer or chief financial officer of an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, and that has fewer than five full-time employees is not required to attend training required by this section unless the person is also the investment officer of the entity.
- (c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.
- (d) Not later than December 31 each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the governmental entities for which the person provided required training under this section during that calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.
- (e) This section does not apply to a district governed by Chapter 36 or 49, Water Code.  
Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 4, eff. May 14, 2001.

**Sec. 2256.009. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES.**

- (a) Except as provided by Subsection (b), the following are authorized investments under this subchapter:
  - (1) obligations, including letters of credit, of the United States or its agencies and instrumentalities;
  - (2) direct obligations of this state or its agencies and instrumentalities;
  - (3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
  - (4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities;
  - (5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and
  - (6) bonds issued, assumed, or guaranteed by the State of Israel.
- (b) The following are not authorized investments under this section:
  - (1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
  - (2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
  - (3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
  - (4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 558, Sec. 1, eff. Sept. 1, 2001.

**Sec. 2256.010. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT AND SHARE CERTIFICATES.** A certificate of deposit or share certificate is an authorized investment under this subchapter if the certificate is issued by a state or national bank domiciled in this state, a savings bank domiciled in this state, or a state or federal credit union domiciled in this state and is:

- (1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;
- (2) secured by obligations that are described by Section 2256.009(a), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or
- (3) secured in any other manner and amount provided by law for deposits of the investing entity.

Amended by Acts 1995, 74th Leg., ch. 32, Sec. 1, eff. April 28, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 6, eff. Sept. 1, 1997.

**Sec. 2256.011. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS.**

- (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:
  - (1) has a defined termination date;
  - (2) is secured by obligations described by Section 2256.009(a)(1); and
  - (3) requires the securities being purchased by the entity to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and
  - (4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.
- (b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1), at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.
- (c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.
- (d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM.**

- (a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.
- (b) To qualify as an authorized investment under this subchapter:
  - (1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;
  - (2) a loan made under the program must allow for termination at any time;
  - (3) a loan made under the program must be secured by:
    - (A) pledged securities described by Section 2256.009;
    - (B) pledged irrevocable letters of credit issued by a bank that is:
      - (i) organized and existing under the laws of the United States or any other state; and
      - (ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or
    - (C) cash invested in accordance with Section:

- (i) 2256.009;
  - (ii) 2256.013;
  - (iii) 2256.014; or
  - (iv) 2256.016;
- (4) the terms of a loan made under the program must require that the securities being held as collateral be:
- (A) pledged to the investing entity;
  - (B) held in the investing entity's name; and
  - (C) deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity;
- (5) a loan made under the program must be placed through:
- (A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or
  - (B) a financial institution doing business in this state; and
- (6) an agreement to lend securities that is executed under this section must have a term of one year or less.

Added by Acts 2003, 78th Leg., ch. 1227, Sec. 1, eff. Sept. 1, 2003.

**Sec. 2256.012. AUTHORIZED INVESTMENTS: BANKER'S ACCEPTANCES.** A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

- (1) has a stated maturity of 270 days or fewer from the date of its issuance;
- (2) will be, in accordance with its terms, liquidated in full at maturity;
- (3) is eligible for collateral for borrowing from a Federal Reserve Bank; and
- (4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.013. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER.** Commercial paper is an authorized investment under this subchapter if the commercial paper:

- (1) has a stated maturity of 270 days or fewer from the date of its issuance; and
- (2) is rated not less than A-1 or P-1 or an equivalent rating by at least:
  - (A) two nationally recognized credit rating agencies; or
  - (B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.014. AUTHORIZED INVESTMENTS: MUTUAL FUNDS.**

- (a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:
  - (1) is registered with and regulated by the Securities and Exchange Commission;
  - (2) provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);
  - (3) has a dollar-weighted average stated maturity of 90 days or fewer; and
  - (4) includes in its investment objectives the maintenance of a stable net asset value of \$1 for each share.
- (b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:
  - (1) is registered with the Securities and Exchange Commission;
  - (2) has an average weighted maturity of less than two years;
  - (3) is invested exclusively in obligations approved by this subchapter;
  - (4) is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and

- (5) conforms to the requirements set forth in Sections 2256.016(b) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.
- (c) An entity is not authorized by this section to:
  - (1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b);
  - (2) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b); or
  - (3) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the mutual fund.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 8, eff. Sept. 1, 1999.

**Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS.**

- (a) A guaranteed investment contract is an authorized investment for bond proceeds under this subchapter if the guaranteed investment contract:
  - (1) has a defined termination date;
  - (2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and
  - (3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.
- (b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.
- (c) To be eligible as an authorized investment:
  - (1) the governing body of the entity must specifically authorize guaranteed investment contracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;
  - (2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;
  - (3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;
  - (4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and
  - (5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 9, 10, eff. Sept. 1, 1999.

**Sec. 2256.016. AUTHORIZED INVESTMENTS: INVESTMENT POOLS.**

- (a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter.
- (b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:
  - (1) the types of investments in which money is allowed to be invested;
  - (2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;
  - (3) the maximum stated maturity date any investment security within the portfolio has;
  - (4) the objectives of the pool;

- (5) the size of the pool;
  - (6) the names of the members of the advisory board of the pool and the dates their terms expire;
  - (7) the custodian bank that will safekeep the pool's assets;
  - (8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;
  - (9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;
  - (10) the name and address of the independent auditor of the pool;
  - (11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and
  - (12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.
- (c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:
- (1) investment transaction confirmations; and
  - (2) a monthly report that contains, at a minimum, the following information:
    - (A) the types and percentage breakdown of securities in which the pool is invested;
    - (B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;
    - (C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;
    - (D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;
    - (E) the size of the pool;
    - (F) the number of participants in the pool;
    - (G) the custodian bank that is safekeeping the assets of the pool;
    - (H) a listing of daily transaction activity of the entity participating in the pool;
    - (I) the yield and expense ratio of the pool;
    - (J) the portfolio managers of the pool; and
    - (K) any changes or addenda to the offering circular.
- (d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.
- (e) In this section, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange Commission.
- (f) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool created to function as a money market mutual fund must mark its portfolio to market daily, and, to the extent reasonably possible, stabilize at a \$1 net asset value. If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, portfolio holdings shall be sold as necessary to maintain the ratio between 0.995 and 1.005.
- (g) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool must have an advisory board composed:
- (1) equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created under Chapter 791 and managed by a state agency; or
  - (2) of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.
- (h) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 9, eff. Sept. 1, 1997.

**Sec. 2256.017. EXISTING INVESTMENTS.** An entity is not required to liquidate investments that were authorized investments at the time of purchase.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.46(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 10, eff. Sept. 1, 1997.

**Sec. 2256.019. RATING OF CERTAIN INVESTMENT POOLS.** A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service or no lower than investment grade by at least one nationally recognized rating service with a weighted average maturity no greater than 90 days.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 11, eff. Sept. 1, 1997.

**Sec. 2256.020. AUTHORIZED INVESTMENTS: INSTITUTIONS OF HIGHER EDUCATION.** In addition to the authorized investments permitted by this subchapter, an institution of higher education may purchase, sell, and invest its funds and funds under its control in the following:

- (1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));
- (2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and
- (3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY.**

- (a) A municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. If there is a conflict between the municipal charter of the municipality and this chapter, this chapter prevails.
- (b) A payment by a municipally owned electric or gas utility under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and the utility may credit any amounts it receives under the contract or agreement against fuel expenses.
- (c) The governing body of a municipally owned electric or gas utility or the body vested with power to manage and operate the municipally owned electric or gas utility may set policy regarding hedging transactions.
- (d) In this section, "hedging" means the buying and selling of fuel oil, natural gas, and electric energy futures or options or similar contracts on those commodity futures as a protection against loss due to price fluctuation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 48, eff. Sept. 1, 1999.

**Sec. 2256.021. EFFECT OF LOSS OF REQUIRED RATING.** An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY.** Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state auditor, subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 42, eff. Sept. 1, 2003.

**Sec. 2256.023. INTERNAL MANAGEMENT REPORTS.**

- (a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.
- (b) The report must:
  - (1) describe in detail the investment position of the entity on the date of the report;
  - (2) be prepared jointly by all investment officers of the entity;
  - (3) be signed by each investment officer of the entity;
  - (4) contain a summary statement, prepared in compliance with generally accepted accounting principles, of each pooled fund group that states the:
    - (A) beginning market value for the reporting period;
    - (B) additions and changes to the market value during the period;
    - (C) ending market value for the period; and
    - (D) fully accrued interest for the reporting period;
  - (5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested;
  - (6) state the maturity date of each separately invested asset that has a maturity date;
  - (7) state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and
  - (8) state the compliance of the investment portfolio of the state agency or local government as it relates to:
    - (A) the investment strategy expressed in the agency's or local government's investment policy; and
    - (B) relevant provisions of this chapter.
- (c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.
- (d) If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 12, eff. Sept. 1, 1997.

**Sec. 2256.024. SUBCHAPTER CUMULATIVE.**

- (a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b), this subchapter does not:
  - (1) prohibit an investment specifically authorized by other law; or
  - (2) authorize an investment specifically prohibited by other law.
- (b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.
- (c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are authorized investments with respect to the housing bond programs operated by:
  - (1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;
  - (2) an entity created under Chapter 392, Local Government Code; or
  - (3) an entity created under Chapter 394, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.025. SELECTION OF AUTHORIZED BROKERS.** The governing body of an entity subject to this subchapter or the designated investment committee of the entity shall, at least annually, review,

revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

**Sec. 2256.026. STATUTORY COMPLIANCE.** All investments made by entities must comply with this subchapter and all federal, state, and local statutes, rules, or regulations.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

#### **SUBCHAPTER B. MISCELLANEOUS PROVISIONS**

**Sec. 2256.051. ELECTRONIC FUNDS TRANSFER.** Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.052. PRIVATE AUDITOR.** Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee's initiative or on request of the governing body of the agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

**Sec. 2256.053. PAYMENT FOR SECURITIES PURCHASED BY STATE.** The comptroller or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. A purchase of securities may not be made at a price that exceeds the existing market value of the securities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.67, eff. Sept. 1, 1997.

**Sec. 2256.054. DELIVERY OF SECURITIES PURCHASED BY STATE.** A security purchased under this chapter may be delivered to the comptroller, a bank, or the board or agency investing its funds. The delivery shall be made under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.68, eff. Sept. 1, 1997.

**Sec. 2256.055. DEPOSIT OF SECURITIES PURCHASED BY STATE.** At the direction of the comptroller or the agency, a security purchased under this chapter may be deposited in trust with a bank or federal reserve bank or branch designated by the comptroller, whether in or outside the state. The deposit shall be held in the entity's name as evidenced by a trust receipt of the bank with which the securities are deposited.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.69, eff. Sept. 1, 1997.

**GOVERNMENT CODE**  
**CHAPTER 2257. COLLATERAL FOR PUBLIC FUNDS**  
**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 2257.001. SHORT TITLE.** This chapter may be cited as the Public Funds Collateral Act.  
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.002. DEFINITIONS.** In this chapter:

- (1) "Bank holding company" has the meaning assigned by Section 31.002(a), Finance Code.
- (2) "Control" has the meaning assigned by Section 31.002(a), Finance Code.
- (3) "Deposit of public funds" means public funds of a public entity that:
  - (A) the comptroller does not manage under Chapter 404; and
  - (B) are held as a demand or time deposit by a depository institution expressly authorized by law to accept a public entity's demand or time deposit.
- (4) "Eligible security" means:
  - (A) a surety bond;
  - (B) an investment security;
  - (C) an ownership or beneficial interest in an investment security, other than an option contract to purchase or sell an investment security;
  - (D) a fixed-rate collateralized mortgage obligation that has an expected weighted average life of 10 years or less and does not constitute a high-risk mortgage security; or
  - (E) a floating-rate collateralized mortgage obligation that does not constitute a high-risk mortgage security.
- (5) "Investment security" means:
  - (A) an obligation that in the opinion of the attorney general of the United States is a general obligation of the United States and backed by its full faith and credit;
  - (B) a general or special obligation issued by a public agency that is payable from taxes, revenues, or a combination of taxes and revenues; or
  - (C) a security in which a public entity may invest under Subchapter A, Chapter 2256.
- (6) "Permitted institution" means:
  - (A) a Federal Reserve Bank;
  - (B) a clearing corporation, as defined by Section 8.102, Business & Commerce Code;
  - (C) a bank eligible to be a custodian under Section 2257.041; or
  - (D) a state or nationally chartered bank that is controlled by a bank holding company that controls a bank eligible to be a custodian under Section 2257.041.
- (7) "Public agency" means a state or a political or governmental entity, agency, instrumentality, or subdivision of a state, including a municipality, an institution of higher education, as defined by Section 61.003, Education Code, a junior college, a district created under Article XVI, Section 59, of the Texas Constitution, and a public hospital.
- (8) "Public entity" means a public agency in this state, but does not include an institution of higher education, as defined by Section 61.003, Education Code.
- (9) "State agency" means a public entity that:
  - (A) has authority that is not limited to a geographic portion of the state; and
  - (B) was created by the constitution or a statute.
- (10) "Trust receipt" means evidence of receipt, identification, and recording, including:
  - (A) a physical controlled trust receipt; or
  - (B) a written or electronically transmitted advice of transaction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.48(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 914, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 254, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 891, Sec. 3.22(4), eff. Sept.

1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 8.70, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.63, eff. Sept. 1, 1999.

**Sec. 2257.0025. HIGH-RISK MORTGAGE SECURITY.**

- (a) For purposes of this chapter, a fixed-rate collateralized mortgage obligation is a high-risk mortgage security if the security:
  - (1) has an average life sensitivity with a weighted average life that:
    - (A) extends by more than four years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or
    - (B) shortens by more than six years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and
  - (2) is price sensitive; that is, the estimated change in the price of the mortgage derivative product is more than 17 percent, because of an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.
- (b) For purposes of this chapter, a floating-rate collateralized mortgage obligation is a high-risk mortgage security if the security:
  - (1) bears an interest rate that is equal to the contractual cap on the instrument; or
  - (2) is price sensitive; that is, the estimated change in the price of the mortgage derivative product is more than 17 percent, because of an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

Added by Acts 1997, 75th Leg., ch. 254, Sec. 2, eff. Sept. 1, 1997.

**Sec. 2257.003. CHAPTER NOT APPLICABLE TO DEFERRED COMPENSATION PLANS.** This chapter does not apply to funds that a public entity maintains or administers under a deferred compensation plan, the federal income tax treatment of which is governed by Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Sections 401(k) and 457).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.004. CONFLICT WITH OTHER LAW.** This chapter prevails over any other law relating to security for a deposit of public funds to the extent of any conflict.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.005. CONTRACT GOVERNS LEGAL ACTION.** A legal action brought by or against a public entity that arises out of or in connection with the duties of a depository, custodian, or permitted institution under this chapter must be brought and maintained as provided by the contract with the public entity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SUBCHAPTER B. DEPOSITORY; SECURITY FOR DEPOSIT OF PUBLIC FUNDS**

**Sec. 2257.021. COLLATERAL REQUIRED.** A deposit of public funds shall be secured by eligible security to the extent and in the manner required by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.022. AMOUNT OF COLLATERAL.**

- (a) Except as provided by Subsection (b), the total value of eligible security to secure a deposit of public funds must be in an amount not less than the amount of the deposit of public funds:
  - (1) increased by the amount of any accrued interest; and
  - (2) reduced to the extent that the United States or an instrumentality of the United States insures the deposit.
- (b) The total value of eligible security described by Section 45.201(4)(D), Education Code, to secure a deposit of public funds of a school district must be in an amount not less than 110 percent of the amount of the deposit as determined under Subsection (a). The total market value of the eligible security must be reported at least once each month to the school district.
- (c) The value of a surety bond is its face value.
- (d) The value of an investment security is its market value.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 46, eff. Sept. 1, 2003.

**Sec. 2257.023. COLLATERAL POLICY.**

- (a) In accordance with a written policy approved by the governing body of the public entity, a public entity shall determine if an investment security is eligible to secure deposits of public funds.
- (b) The written policy may include:
  - (1) the security of the institution that obtains or holds an investment security;
  - (2) the substitution or release of an investment security; and
  - (3) the method by which an investment security used to secure a deposit of public funds is valued.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.024. CONTRACT FOR SECURING DEPOSIT OF PUBLIC FUNDS.**

- (a) A public entity may contract with a bank that has its main office or a branch office in this state to secure a deposit of public funds.
- (b) The contract may contain a term or condition relating to an investment security used as security for a deposit of public funds, including a term or condition relating to the:
  - (1) possession of the collateral;
  - (2) substitution or release of an investment security;
  - (3) ownership of the investment securities of the bank used to secure a deposit of public funds; and
  - (4) method by which an investment security used to secure a deposit of public funds is valued.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 5.006, eff. Sept. 1, 1999.

**Sec. 2257.025. RECORDS OF DEPOSITORY.**

- (a) A public entity's depository shall maintain a separate, accurate, and complete record relating to a pledged investment security, a deposit of public funds, and a transaction related to a pledged investment security.
- (b) The comptroller or the public entity may examine and verify at any reasonable time a pledged investment security or a record a depository maintains under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.16, eff. Sept. 1, 1997.

**Sec. 2257.026. CHANGE IN AMOUNT OR ACTIVITY OF DEPOSITS OF PUBLIC FUNDS.** A public entity shall inform the depository for the public entity's deposit of public funds of a significant change in the amount or activity of those deposits within a reasonable time before the change occurs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SUBCHAPTER C. CUSTODIAN; PERMITTED INSTITUTION**

**Sec. 2257.041. DEPOSIT OF SECURITIES WITH CUSTODIAN.**

- (a) In addition to other authority granted by law, a depository for a public entity other than a state agency may deposit with a custodian a security pledged to secure a deposit of public funds.
- (b) At the request of the public entity, a depository for a public entity other than a state agency shall deposit with a custodian a security pledged to secure a deposit of public funds.
- (c) A depository for a state agency shall deposit with a custodian a security pledged to secure a deposit of public funds. The custodian and the state agency shall agree in writing on the terms and conditions for securing a deposit of public funds.
- (d) A custodian must be approved by the public entity and be:
  - (1) a state or national bank that:
    - (A) is designated by the comptroller as a state depository;
    - (B) has its main office or a branch office in this state; and
    - (C) has a capital stock and permanent surplus of \$5 million or more;
  - (2) the Texas Treasury Safekeeping Trust Company;
  - (3) a Federal Reserve Bank or a branch of a Federal Reserve Bank; or
  - (4) a federal home loan bank.
- (e) A custodian holds in trust the securities to secure the deposit of public funds of the public entity in the depository pledging the securities.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1010, Sec. 1, eff. June 17, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.17, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 5.007, eff. Sept. 1, 1999.

**Sec. 2257.042. DEPOSIT OF SECURITIES WITH PERMITTED INSTITUTION.**

- (a) A custodian may deposit with a permitted institution an investment security the custodian holds under Section 2257.041.
- (b) If a deposit is made under Subsection (a):
  - (1) the permitted institution shall hold the investment security to secure funds the public entity deposits in the depository that pledges the investment security;
  - (2) the trust receipt the custodian issues under Section 2257.045 shall show that the custodian has deposited the security in a permitted institution; and
  - (3) the permitted institution, on receipt of the investment security, shall immediately issue to the custodian an advice of transaction or other document that is evidence that the custodian deposited the security in the permitted institution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.043. DEPOSITORY AS CUSTODIAN OR PERMITTED INSTITUTION.**

- (a) A public entity other than a state agency may prohibit a depository or an entity of which the depository is a branch from being the custodian of or permitted institution for a security the depository pledges to secure a deposit of public funds.
- (b) A depository or an entity of which the depository is a branch may not be the custodian of or permitted institution for a security the depository pledges to secure a deposit of public funds by a state agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.044. CUSTODIAN AS BAILEE.**

- (a) A custodian under this chapter or a custodian of a security pledged to an institution of higher education, as defined by Section 61.003, Education Code, whether acting alone or through a permitted institution, is for all purposes the bailee or agent of the public entity or institution depositing the public funds with the depository.
- (b) To the extent of any conflict, Subsection (a) prevails over Chapter 8 or 9, Business & Commerce Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.045. RECEIPT OF SECURITY BY CUSTODIAN.** On receipt of an investment security, a custodian shall:

- (1) immediately identify on its books and records, by book entry or another method, the pledge of the security to the public entity; and
- (2) promptly issue and deliver to the appropriate public entity officer a trust receipt for the pledged security.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.046. BOOKS AND RECORDS OF CUSTODIAN; INSPECTION.**

- (a) A public entity's custodian shall maintain a separate, accurate, and complete record relating to each pledged investment security and each transaction relating to a pledged investment security.
- (b) The comptroller or the public entity may examine and verify at any reasonable time a pledged investment security or a record a custodian maintains under this section. The public entity or its agent may inspect at any time an investment security evidenced by a trust receipt.
- (c) The public entity's custodian shall file a collateral report with the comptroller in the manner and on the dates prescribed by the comptroller.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.18, eff. Sept. 1, 1997.

**Sec. 2257.047. BOOKS AND RECORDS OF PERMITTED INSTITUTION.**

- (a) A permitted institution may apply book entry procedures when an investment security held by a custodian is deposited under Section 2257.042.
- (b) A permitted institution's records must at all times state the name of the custodian that deposits an investment security in the permitted institution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.048. ATTACHMENT AND PERFECTION OF SECURITY INTEREST.**

- (a) A security interest that arises out of a depository's pledge of a security to secure a deposit of public funds by a public entity or an institution of higher education, as defined by Section 61.003, Education Code, is created, attaches, and is perfected for all purposes under state law from the time that the custodian identifies the pledge of the security on the custodian's books and records and issues the trust receipt.
- (b) A security interest in a pledged security remains perfected in the hands of a subsequent custodian or permitted institution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SUBCHAPTER D. AUDITS AND EXAMINATIONS; PENALTIES**

**Sec. 2257.061. AUDITS AND EXAMINATIONS.** As part of an audit or regulatory examination of a public entity's depository or custodian, the auditor or examiner shall:

- (1) examine and verify pledged investment securities and records maintained under Section 2257.025 or 2257.046; and
- (2) report any significant or material noncompliance with this chapter to the comptroller.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.19, eff. Sept. 1, 1997.

**Sec. 2257.062. PENALTIES.**

- (a) The comptroller may revoke a depository's designation as a state depository for one year if, after notice and a hearing, the comptroller makes a written finding that the depository, while acting as either a depository or a custodian:
  - (1) did not maintain reasonable compliance with this chapter; and
  - (2) failed to remedy a violation of this chapter within a reasonable time after receiving written notice of the violation.
- (b) The comptroller may permanently revoke a depository's designation as a state depository if the comptroller makes a written finding that the depository:
  - (1) has not maintained reasonable compliance with this chapter; and
  - (2) has acted in bad faith by not remedying a violation of this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.19, eff. Sept. 1, 1997.

**Sec. 2257.063. MITIGATING CIRCUMSTANCES.**

- (a) The comptroller shall consider the total circumstances relating to the performance of a depository or custodian when the comptroller makes a finding required by Section 2257.062, including the extent to which the noncompliance is minor, isolated, temporary, or nonrecurrent.
- (b) The comptroller may not find that a depository or custodian did not maintain reasonable compliance with this chapter if the noncompliance results from the public entity's failure to comply with Section 2257.026.
- (c) This section does not relieve a depository or custodian of the obligation to secure a deposit of public funds with eligible security in the amount and manner required by this chapter within a reasonable time after the public entity deposits the deposit of public funds with the depository.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.19, eff. Sept. 1, 1997.

**Sec. 2257.064. REINSTATEMENT.** The comptroller may reinstate a depository's designation as a state depository if:

- (1) the comptroller determines that the depository has remedied all violations of this chapter; and
- (2) the depository assures the comptroller to the comptroller's satisfaction that the depository will maintain reasonable compliance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.19, eff. Sept. 1, 1997.

**SUBCHAPTER E. EXEMPT INSTITUTIONS**

**Sec. 2257.081. DEFINITION.** In this subchapter, "exempt institution" means:

- (1) a public retirement system, as defined by Section 802.001; or
- (2) the permanent school fund, as described by Section 43.001, Education Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.31, eff. Sept. 1, 1997.

**Sec. 2257.082. FUNDS OF EXEMPT INSTITUTION.** An exempt institution is not required to have its funds fully insured or collateralized at all times if:

- (1) the funds are held by:
  - (A) a custodian of the institution's assets under a trust agreement; or
  - (B) a person in connection with a transaction related to an investment; and
- (2) the governing body of the institution, in exercising its fiduciary responsibility, determines that the institution is adequately protected by using a trust agreement, special deposit, surety bond, substantial deposit insurance, or other method an exempt institution commonly uses to protect itself from liability.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**Sec. 2257.083. INVESTMENT; SELECTION OF DEPOSITORY.** This chapter does not:

- (1) prohibit an exempt institution from prudently investing in a certificate of deposit; or
- (2) restrict the selection of a depository by the governing body of an exempt institution in accordance with its fiduciary duty.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**APPENDIX B  
MASTER REPURCHASE AGREEMENT**

## Master Repurchase Agreement

**Between:**

**Dated as of**

\_\_\_\_\_

**and**

\_\_\_\_\_

### 1. Applicability

From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or financial instruments ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto, unless otherwise agreed in writing.

### 2. Definitions

(a) "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or such party seeking the appointment of a receiver, trustee, custodian or similar official for such party or any substantial part of its property, or (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by a party of a general assignment for the benefit of creditors, or (iv) the admission in writing by a party of such party's inability to pay such party's debts as they become due;

(b) "Additional Purchased Securities", Securities provided by the Seller to Buyer pursuant to Paragraph 4(a) hereof;

(c) "Buyer's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of a percentage ( which may be equal to the percentage that is agreed to as the Seller Margin Amount under subparagraph (q) of this Paragraph), agreed to by Buyer and Seller prior to entering into the Transaction, to the Repurchase Price for such Transaction as of such date;

(d) "Confirmation", the meaning specified in Paragraph 3(b) hereof;

(e) "Income", with respect to any Security at any time, any principal thereof then payable and all interest, dividends or other distributions thereon;

(f) "Margin Deficit", the meaning specified in Paragraph 4(a) hereof;

(g) "Margin Excess", the meaning specified in Paragraph 4(b) hereof;

(h) "Market Value", with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most

recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);

(i) "Price Differential", with respect to any Transaction hereunder as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

(j) "Pricing Rate", the per annum percentage rate for determination of the Price Differential;

(k) "Prime Rate", the prime rate of U.S. money center commercial banks as published in *The Wall Street Journal*;

(l) "Purchase Date", the date on which Purchased Securities are transferred by Seller to Buyer;

(m) "Purchase Price", (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4(b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller's obligations under clause (ii) of Paragraph 5 hereof;

(n) "Purchased Securities", the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) and shall exclude Securities returned pursuant to Paragraph 4(b);

(o) "Repurchase Date", the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3(c) or 11 hereof;

(p) "Repurchased Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination, increased by any amount determined by the application of the provisions of Paragraph 11 hereof;

(q) "Seller's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of a percentage (which may be equal to the percentage that is agreed to as the Buyer's Margin Amount under subparagraph (c) of this Paragraph), agreed to by Buyer and Seller prior to entering into the Transaction, to the Repurchase Price for such Transaction as of such date.

### **3. Initiation; Confirmation; Termination**

(a) An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.

(b) Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.

(c) In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

#### **4. Margin Maintenance**

(a) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).

(b) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

(c) Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

(d) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).

(e) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).

#### **5. Income Payments**

Where a particular Transaction's term extends over an Income payment date on the Securities subject to that Transaction, Buyer shall, as the parties may agree with respect to such Transaction (or, in the absence of any agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is payable either (i) transfer to or credit to the account of Seller an amount equal to such Income payment or payments with respect to any Purchased Securities subject to such Transaction or (ii) apply the Income payment or payments to reduce the amount to be transferred to Buyer by Seller upon termination of the Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit.

## 6. Security Interest

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all proceeds thereof.

## 7. Payment and Transfer

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer. As used herein with respect to Securities, "transfer" is intended to have the same meaning as when used in Section 8-313 of the New York Uniform Commercial Code or, where applicable, in any federal regulation governing transfers of the Securities.

## 8. Segregation of Purchased Securities

To the extent required by applicable law, all Purchased Securities in the possession of the Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial intermediary or a clearing corporation. Title to all Purchased Securities shall pass to Buyer and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraphs 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

### Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities

Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]\* [may]\*\* be subject to liens granted by Seller to [its clearing bank]\* [third parties]\*\* and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegment substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]\* [any]\*\* lien or to obtain substitute securities.

\* Language to be used under 17 C.F.R. d 403.4(e) if Seller is a government securities broker or dealer other than a financial institution.

\*\* Language to be used under 17 C.F.R. d 403.5 (d) if Seller is a financial institution.

## 9. Substitution

(a) Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.

(b) In Transactions in which the Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph (a) of this Paragraph, to have agreed to and accepted in this Agreement substitution by Seller of other Securities for Purchased Securities; *provided, however*, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

#### **10. Representations**

Each of Buyer and Seller represents and warrants to other that (i) it is duly authorized to execute and deliver this Agreement, to enter into the Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal ( or, if agreed in writing in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

#### **11. Events of Default**

In the event that (i) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (ii) Seller or Buyer fails, after one business day's notice, to comply with Paragraph 4 hereof, (iii) Buyer fails to comply with Paragraph 5 hereof, (iv) an Act of Insolvency occurs with respect to Seller or Buyer, (v) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vi) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

(a) At the option of the non defaulting party, exercised by written notice to the defaulting party (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Act of Insolvency), the Repurchase Date for each Transaction hereunder shall be deemed immediately to occur.

(b) In all Transactions in which the defaulting party is acting as Seller, if the non defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations hereunder to repurchase all Purchased Securities in such Transactions shall thereupon become immediately due and payable, (ii) to the extent permitted by applicable law, the Repurchase Price with respect to each such Transaction shall be increased by the aggregate amount obtained by daily application of (x) the greater of the Pricing Rate for such Transaction or the Prime Rate to (y) the Repurchase Price for such Transaction as of the Repurchase Date as determined pursuant to subparagraph (a) of this Paragraph (decreased as of any day by (A) any amounts retained by the non defaulting party with respect to such Repurchase Price pursuant to clause (iii) of this subparagraph, (B) any proceeds from the sale of Purchased Securities pursuant to subparagraph (d) (i) of this Paragraph, and (C) any amounts credited to the account of the defaulting party pursuant to subparagraph (e) of this Paragraph) on a 360 day per year basis for the actual number of days during the period from and including the date of the Event of Default giving rise to such option to but excluding the date of payment of the Repurchase Price as so increased, (iii) all Income paid after such exercise or deemed exercise shall be retained by the non defaulting party and applied to the aggregate unpaid Repurchase Prices owed by the defaulting party, and (iv) the defaulting party shall immediately deliver to the non defaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession.

(c) In all Transactions in which the defaulting is acting as Buyer, upon tender by the non defaulting party of payment of the aggregate Repurchase Prices for all such Transactions, the defaulting party's right, title and interest in all Purchased Securities subject to such Transactions

shall be deemed transferred to the non defaulting party, and the defaulting party shall deliver all such Purchased Securities to the non defaulting party.

(d) After one business day's notice to the defaulting party (which notice need not be given if an Act of Insolvency shall have occurred, and which may be the notice given under subparagraph (a) of this Paragraph or the notice referred to in clause (ii) of the first sentence of this Paragraph), the non defaulting party may :

(i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market at such price or prices as the non defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and

(ii) as to Transactions in which the defaulting party is acting as Buyer, (A) purchase securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the non defaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source.

(e) As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the non defaulting party (i) with respect to Purchased Securities (other than Additional Purchased Securities), for any excess of the price paid (or deemed paid) by the non defaulting party for Replacement Securities therefor over the Repurchase Price for such Purchased Securities and (ii) with respect to Additional Purchased Securities, for the price paid (or deemed paid) by the non defaulting party for the Replacement Securities, therefor. In addition, the defaulting party shall be liable to the non defaulting party for interest on such remaining liability with respect to each such purchase (or deemed purchase) of Replacement Securities from the date of such purchase (or deemed purchase) until paid in full by Buyer. Such interest shall be at a rate equal to the greater of the Pricing Rate for such Transaction or the Prime Rate.

(f) For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the non defaulting party of its option under subparagraph (a) of this Paragraph.

(g) The defaulting party shall be liable to the non defaulting party for the amount of all reasonable legal or other expenses incurred by the non defaulting party in connection with or as a consequence of an Event of Default, together with interest thereon at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

(h) The non defaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

## **12. Single Agreement**

Buyer and Seller acknowledge that, and have entered hereunto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any other Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the

obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

### **13. Notices and Other Communications**

Unless another address is specified in writing by the respective party to whom any notice or other communication is to be given hereunder, all such notices or communications shall be in writing or confirmed in writing and delivered at the respective addresses set forth in Annex II attached hereto.

### **14. Entire Agreement; Severability**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

### **15. Non-assignability: Termination**

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be canceled by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.

### **16. Governing Law**

This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

### **17. No Waivers, Etc.**

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to subparagraphs 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

### **18. Use of Employee Plan Assets**

(a) If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party" ) in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

(b) Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

(c) By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

### **19. Intent**

(a) The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended.

(b) It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof, is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

**20. Disclosure Relating to Certain Federal Protections**

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

[Name of Party]

[Name of Party]

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_.

**APPENDIX C  
BROKER/DEALER CERTIFICATION**

**TEXAS PUBLIC FUNDS INVESTMENT ACT  
ACKNOWLEDGMENTS**

These Acknowledgments are executed on behalf of the **Austin Community College** ("Investor") and \_\_\_\_\_ ("Business Organization") pursuant to the Public Funds Investment Act, Chapter 2256, Government Code, Texas Codes Annotated (the "Act"), in connection with investment transactions conducted between the Investor and the Business Organization.

**Acknowledgment by Investor**

The undersigned investment officer of the Investor ("Investment Officer") hereby acknowledges, represents and agrees on behalf of the Investor that:

- (i) The Investment Officer (a) has been duly designated by official action of the governing body of the Investor to act as its Investment Officer pursuant to the Act, (b) is vested with full power and authority under the Act and other applicable law to engage in investment activities on behalf of the Investor, and (c) is duly authorized to execute this Acknowledgment on behalf of the Investor,
- (ii) Pursuant to the Act, the governing body of the Investor has duly adopted a written investment policy which complies with the Act, including an investment strategy (as the same may be amended, the "Investment Policy"), and the Investment Officer (a) has furnished a true and correct copy of the Investment Policy to the Business Organization and (b) will notify the Business Organization of any revision of, or amendment to, the Investment Policy. The Business Organization shall be entitled to rely upon the most recent version of the Investment Policy furnished by the Investment Officer until provided with an amended version;
- (iii) Attached hereto is a list of investments that are authorized pursuant to the Investment Policy and that the Investment Officer understands may be available from the Business Organization. The attached list may be amended from time to time by mutual agreement of the Investor and the Business Organization, and
- (iv) In connection with any investment transaction between the Business Organization and the Investor, the Business Organization is not responsible for assuring compliance with those aspects of the Investment Policy over which the Business Organization has no control or knowledge, such as restrictions as to diversity and average maturity, or which require an interpretation of subjective investment standards.

**INVESTMENT OFFICER**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Acknowledgment by Business Organization**

In reliance upon the foregoing "Acknowledgment by Investor," the undersigned qualified representative of the Business Organization ("Qualified Representative") acknowledges, represents, and agrees on behalf of the Business Organization that:

- (i) The Qualified Representative (a) is registered under the rules of the National Association of Securities Dealers, (b) is the duly appointed and acting officer of the Business Organization, holding the office set forth underneath its name below, and (c) is duly authorized to execute this Certification on behalf of the Business Organization,
- (ii) The Qualified Representative has received and reviewed the Investment Policy furnished by the Investment Officer,
- (iii) The Business Organization will provide the Investment Officer with periodic account and other reasonably requested information that will assist the Investment Officer in carrying out his or her responsibility to make investment decisions consistent with the Investment Policy; and
- (iv) The Business Organization will not sell to the Investor investments other than those on the attached list, which may be amended from time to time by mutual agreement of the Investor and the Business Organization.

**QUALIFIED REPRESENTATIVE**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_