

## Current Text as of 8/17

### RULES OF THE MONEY MANAGEMENT COUNCIL

**RULE 2: Investment of Funds of Public Education Foundations established under Section 53A-4-205 or funds acquired by gift, devise or bequest.**

**1. Authority:** This rule is issued pursuant to Section 51-7-18(2) (b) .

**2. Scope of Rule:** This rule relates to all funds of public education foundations established under Section 53A-4-205 and any funds held by a public treasurer which were acquired by gift, devise, or bequest and which are permitted by statute to be invested according to rules adopted by the Money Management Council.

**3. Investment Directions Contained in Gift or Grant:** If any gift, devise, or bequest, whether outright or in trust, is made by a written instrument which contains lawful directions as to investment thereof, the funds embodied within the gift devise or bequest shall be invested in accordance with those directions. Common stock received by donation which is registered stock, or which is otherwise restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained until the restrictions lapse, expire or are revoked and shall be considered to be invested according to the terms of the donation. A gift, devise or bequest of closely held non-marketable securities, shall be purchased by the closely held entity within twenty four months of the gift, devise or bequest. Evidence of such put shall be furnished at the time of the gift, devise or bequest.

**4. Investment of Funds:**

A. Funds within the scope of this rule, except funds described in 628-2-3, may be invested in any of the following:

1. In any deposit or investment authorized by Section 51-7-11 or 51-7-5;

2. In professionally managed pooled or commingled investment funds registered with the Securities and Exchange Commission or, if not registered with Securities and Exchange Commission with a Morningstar rating of "3" or higher.

3. In equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ, in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 20% of all funds may be invested in securities listed in the NASDAQ;

b) no more than 5% of all funds may be invested in the securities of any one corporate issuer;

c) no more than 25% of all funds may be invested in a particular industry;

- d) no more than 5% of all funds may be invested in securities of corporation that have been in continuous operation for less than three years;
- e) no more than 5% of the outstanding voting securities of any one corporation may be held; and
- f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index and the Wilshire 5000;

4. In fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated "investment grade" or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied, on a total market basis, at the time of investment:

- a) no more than 5% of all funds may be invested in the securities of any one corporate issuer;
- b) no more than 25% of all funds may be invested in a particular industry;
- c) the dollar-weighted average maturity of fixed-income securities acquired under R628-2-4.(A)(4) may not exceed ten years; and

5. In fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

6. Investments made under this rule shall observe the following investment percentages on a total market basis as of the most recent quarterly review, for specified subsections;

- 1). no more than 75% of all funds may be invested in equity securities (subsection R628-2-4.(A)(3). investments) at any one time.
- 2). no more than 5% of all funds may be invested in collateralized mortgage obligations (CMO's) (subsection R628-2-4(A)(5) investments).

B. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

C. Certified investment advisers may be employed to assist in the investment of funds under this rule. Compensation to certified investment advisers may be provided from earnings generated by the funds' investments.

#### **5. Disposition of Nonqualifying Investments:**

- A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of such assets, the following factors, among others, shall be given consideration:

1. The legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. The size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. The wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall be deemed to make an investment nonqualifying, if the retention thereof is specifically authorized or directed under terms of the gift, devise, or bequest, or if the security is restricted from sale as provided in this rule.

**6. Nonqualifying Investments Held On Effective Date:** Any nonqualifying investments held on November 1, 2005 shall be treated as having been received on the effective date and shall be disposed of as provided in subsection R628-2-5.

**7. Multiple Funds:** If a public treasurer or a public foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, or bequest, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in subsection R628-2-4(B).

**8. Investment Policy Approval.** Each public education foundation or public treasurer, having funds acquired by gift, devise, or bequest shall have their investment policies approved by their respective board of trustees or governing body.

**9. Reporting by Public Education Foundations and public treasurers:** Each public education foundation and public treasurer, having funds acquired by gift, devise, or bequest and funds functioning as endowments shall file a written report with the Council on or before July 31 and January 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. Total market value of funds held under gifts, devise, or bequest and funds functioning as endowments;

B. Amount thereof invested under this rule.

C. Amounts invested under this rule indicating the carrying value and market value of each category of investment; and  
D. A list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

E. The board of trustees or governing body shall review the portfolio at least quarterly, and shall receive the certification from the public treasurer that the portfolio complies with the Money Management Act, Rules of the Money Management Council and the prudent person rule in section 51-7-14 of the Act.

**RULE 4: Bonding of Public Treasurers**

**1. Authority:** This rule is issued pursuant to Section 51-7-15.

**2. Fidelity Bond or Crime Insurance:** Every public treasurer shall secure a fidelity bond or crime insurance in the amount shown in Rule 4-4. Bonds must be issued by a corporate surety licensed to do business in the state of Utah and having a current A.M. Best Rating of "A" or better.

Crime insurance must be issued by:

a) an insurer licensed to do business in the State of Utah and having a current A.M. Best Rating of "A" or better; or

b) an interlocal agency created under Section 11-13-101 operating as a joint self-insurance fund. A joint self-insurance fund providing crime coverage under this section must maintain a restricted account in the PTIF equal to 50% of the per occurrence limit of coverage.

Bonds should be effective as of the date the treasurer assumes the duties of the office or is sworn in.

**3. Budgeted Gross Revenue:** The basis used shall be the budgeted gross revenue for the previous accounting year. Budgeted gross revenue includes all funds collected or handled by the public treasurer. For purposes of this rule, taxes, fees, service charges, interest, proceeds from sale of assets, and borrowing proceeds are examples of revenue categories which are considered.

**4. Amount of Bond**

Budget		Percent for Bond	
\$0	to 10,000	n/a but not less than	0
10,001	to 100,000	9% but not less than	5,000
100,001	to 500,000	8% but not less than	9,000
500,001	to 1,000,000	7% but not less than	40,000
1,000,001	to 5,000,000	6% but not less than	70,000
5,000,001	to 10,000,000	5% but not less than	300,000
10,000,001	to 25,000,000	4% but not less than	500,000
25,000,001	to 50,000,000	3% but not less than	1,000,000
50,000,001	to 500,000,000	2% but not less than	1,500,000
over	500,000,000		not less than 10,000,000

RULE 10:  
**Rating Requirements to be a Permitted Depository.**

**1. Purpose:** This rule establishes a uniform standard for public treasurers to evaluate the financial condition of Permitted depository institutions to determine if acceptance of Utah public funds by those institutions would expose public treasurers to undo risk. The criteria is applicable to all Permitted Depository institutions to determine if they are eligible to accept deposits of Utah public funds. The criteria established by this rule is designed to be flexible enough to ensure that public treasurers will be able to receive competitive market rates on deposits placed outside this state while maintaining sufficient protection from loss.

**2. Authority:** This rule is issued pursuant to Sections 51-7-17(4) and 51-7-18.(2)(b)(iv).

**3. Definitions:** The terms used in this rule are defined in Section 51-7-3.

**4. Rating requirements for permitted depositories.**

(1) The Permitted depository must meet the following criteria to accept deposits from Utah public entities:

- (a) the depository must be federally insured;
- (b) the total assets of the Permitted depository must equal \$5 billion or more as of December 31 of the preceding year, and;
- (c) fixed rate negotiable deposits which meet the criteria of Section 51-7-11(3)(f) must, at the time of investment, have the equivalent of an "A" or better short term rating by at least two NRSRO's, one of which must be Moody's Investors Service or Standard and Poor's, or;
- (d) variable rate negotiable deposits which meet the criteria of Section 51-7-11.(3)(m) must, at the time of investment, have the equivalent of an "A" or better, long term rating, by at least two NRSRO's, one of which must be Moody's Investors Service or Standard and Poor's.

(2) Permitted depository institutions whose ratings drop below the minimum ratings established in R628-10-4(1) above, are no longer be eligible to accept new deposits of Utah public funds. Outstanding deposits may be held to maturity, but may not be renewed and no additional deposits may be made by any public treasurer.

**5. Restrictions on concentration of deposits in any one out-of-state depository institution:**

The maximum amount of any public treasurer's portfolio which can be invested in any one Permitted depository institution shall be as follows:

- 1. Portfolios of \$10,000,000 or less may not invest more than 10% of the total portfolio with a single issuer.
- 2. Portfolios greater than \$10,000,000 but less than \$20,000,000 may not invest more than \$1,000,000 in a single issuer.
- 3. Portfolios of \$20,000,000 or more may not invest more than 5% of the total portfolio with a single issuer.

The amount or percentages used in determining the amount of Permitted deposits a treasurer may purchase, shall be determined by the book value of the portfolio at the time of purchase.

**RULE 11: Maximum Amount of Uninsured Public Funds Allowed To Be Held By Any Qualified Depository**

**1. Authority:** This rule is issued pursuant to Section 51-7-18.1.

**2. Scope:** This rule applies to all qualified depository institutions at which public funds may be held.

**3. Purpose:** This rule establishes a formula for determining the maximum amount of uninsured public funds that can safely be held by any qualified depository. The rule defines capital for each class of qualified depository institution, establishes a formula for calculating the maximum amount of uninsured public funds which can be held at a qualified depository institution, establishes a schedule for reduction of uninsured public deposits based on risk to public treasurers and establishes the frequency of public funds allotment adjustments.

**4. Definitions:** For the purposes of this rule:

A. "Tier 1 capital" means:

(1) For a federally insured commercial bank, thrift institution, industrial loan corporation or a savings and loan association, the same as defined in the Federal Deposit Insurance Act in CFT Chapter III §325.2 or the Office of Thrift Supervision in CFT Chapter V §565.2.

(2) For a federally insured credit union, the sum of undivided earnings, regular reserves, appropriations of undivided earnings referred to as "other reserves", and net income not already included in undivided earnings;

B. "Deposits" means: balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

C. "Out of State" means: in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

D. "Maximum amount" means: the amount of deposits in excess of the federal deposit insurance limit.

E. "Qualified depository" means: a Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25) which is authorized to conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the Federal Government and which has been certified by the Commissioner of Financial Institutions as having met the requirements to receive public funds.

F. "Transaction account" means: a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by check or other negotiable instrument, a payment order of withdrawal, a telephone transfer or other electronic transfer or by any other means or device for the purpose of

making payments or transfer to third persons. This term includes but is not limited to demand deposits, NOW accounts, savings deposits subject to automatic transfers, and share draft accounts.

G. "Utah depository institution" means: a depository institution which is organized under the laws of, and whose home office is located in, this state or which is organized under the laws of the United States and whose home office is located in this state.

## 5. General Rule

**A. Maximum Insured Public Funds:** Any qualified depository may accept, receive, and hold deposits of public funds without limitation, if the total amount of deposits from each public treasurer does not exceed the applicable federal depository insurance limit.

### **B. Maximum Deposits in Excess of the Federal Insurance Limits For Qualified Utah Depository Institutions**

(1) For all qualified Utah depository institutions which receive a qualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, and for all qualified Utah depository institutions which do not have an audit conducted by an independent certified public accountant, the maximum amount of uninsured public funds which may be held shall be according to the following schedule:

<b>Ratio of Adjusted Capital to Total Assets</b>	<b>Public Funds Allotment</b>		
5.0% or more	One	X	Capital
4.00% to 4.99%	.5	X	Capital
Less than 4.00%			None

(2) A qualified Utah depository institution which receives an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, must submit the audit within 100 days of the date of the audit to report the Department of Financial Institutions for review and the Commissioner of Financial Institutions may authorize that the ratios of Tier one capital to total assets applicable to the institution submitting the audit for determining the maximum amount of uninsured public funds allowed may be according to the following schedule:

<b>Ratio of Adjusted Tier 1 Capital Allotment to Total Assets</b>	<b>Uninsured Public Funds</b>		
5% or more	1.5	X	Capital
4.0% to 4.99%	.75	X	Capital
Less than 4.00%			None

C. A qualified out of state depository institution will be treated as a qualified Utah depository subject to all the provisions of this section in determining its uninsured public funds allotment except that the uninsured public funds allotment will be reduced by multiplying by a factor of total deposits

outstanding at Utah branches of the institution divided by the total deposits at the institution. Nothing herein shall prohibit an out of state depository institution from qualifying as a permitted out-of-state depository in accordance with Rule 10.

**6. Responsibility To Monitor Balances:** Deposits in qualified depositories which are limited by 5.B. to the amount of federal deposit insurance must be monitored on a daily basis to assure that no public treasurer has deposit balances in excess of the federal insurance limit. The public treasurer making deposits and the qualified depository accepting deposits shall both be responsible to assure that the depositor's combined balance of all accounts stays within the federal insurance limit.

**7.Collateralization Of Excess Uninsured Public Funds:** Pursuant to Section 51-7-18.1(5), the Money Management Council may require a qualified depository to pledge collateral security for deposits of uninsured public funds which exceed the uninsured public funds allotment established by this rule. Any pledging of collateral security required by the Money Management Council shall be in accordance with the provisions of the Money Management Act and the rules of the Money Management Council.

**8. Frequency Of Adjustment To The Uninsured Public Funds Allotment**

A. The uninsured public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The uninsured public funds allotments shall be established in accordance with the following:

Report of Condition As Of:		Effective Date of Allotment	
December	31	April	1
March	31	July	1
June	30	October	1
September	30	January	1

B. The Money Management Council, may make interim adjustments in a qualified depository's uninsured public funds allotment if material changes in a qualified depository's financial condition have occurred or if there is a formal enforcement action by the federal or state regulator. These interim adjustments may include but are not limited to:

(1) reducing a qualified depository's uninsured public funds allotment to the amount of public funds held by the institution at the time of the Council's review of either the formal enforcement action or the review of the material changes in the qualified depositories financial condition;

(2) reducing a qualified depository's uninsured public funds allotment to zero if there is not sufficient collateral to cover uninsured public funds.

C. Any qualified depository that become subject to a formal enforcement action by any federal regulator shall notify the Council within twenty-four hours of the publication of the action taken by a federal regulator. Failure of a qualified depository to comply with

this requirement to notify the Council may result in action taken by the Council to require collateralization of uninsured public funds in accordance with Section 51-7-18.1(5) and Rule 628-11-7.

D. When a formal enforcement action has been modified or terminated by a federal regulator, the qualified depository shall notify the Council within twenty-four hours of the publication of the modification or termination of any action.

**9.Right To Petition The Council For Review:** A qualified depository may petition the Money Management Council in writing for review and reconsideration of its allotment within 10 business days of written notice of the establishment or modification of its uninsured public funds allotment. The Money Management Council shall rule on any petition for review and reconsideration, at its next regularly scheduled meeting.

**10. Notification of Public Treasurers:** Within 10 business days of the close of each calendar quarter, the Money Management Council shall cause a list of qualified depository institutions and the currently effective uninsured public funds allotment to be prepared and mailed to all public treasurers.

## **RULE 12: Certification of Qualified Depositories for Public Funds**

**1. Authority:** This rule is issued pursuant to Sections 51-7-3(21) and 51-7-18(2) (b) .

**2. Scope:** This rule applies to all federally insured depository institutions with offices and branches in the state of Utah at which deposits are accepted or held.

**3. Purpose:** This rule establishes the requirements which must be met by a federally insured depository institution to become and remain a qualified depository eligible to receive and hold deposits of public funds. It also establishes the conditions under which such eligibility may be terminated and the procedures to be followed in terminating a depository institution's status as a qualified depository.

**4. General Rule:** A Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25), which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the federal government, may be certified as a qualified depository eligible to receive public funds on deposit if it meets all of the following criteria.

A. Before April 1 of each year, pay to the Department of Financial Institutions an annual certification fee as described in section 51-7-18.1(8);

B. Within 30 days of the close of each calendar quarter, submit a report of condition in the form prescribed by the Commissioner of Financial Institutions. The Commissioner may require any additional reports as may be considered necessary to determine the character and condition of the institution's assets, deposits and other liabilities, and its capital and to ensure compliance with the Money Management Act, the rules of the Money Management Council, and any order issued pursuant to an action of the Council. All reports shall be verified by oath or affirmation of the president or an authorized vice president of the institution. Any officer who knowingly makes or causes to be made any false statement or report to the Commissioner or any false entry in the books or accounts of the institution is guilty of a class A misdemeanor.

C. Within 10 business days of the end of each month, file a report with the Commissioner of Financial Institutions of the amount of public funds held on the form prescribed by this rule. The Commissioner may require more frequent reporting if determined that it is necessary to protect public treasurers and to ensure compliance with the Money Management Act, the rules of the Money Management Council or any order issued pursuant to an action of the Council. All reports shall be verified by the oath or affirmation of the president or an authorized vice president of the institution. Any officer who knowingly makes or causes to be made any false statement or report to the Commissioner or any false entry in the books or accounts of the institution is guilty of a class A misdemeanor as authorized by 51-7-18(3) (d) .

D. Have and maintain a positive amount of capital as defined in Rule 11.4.B.

**5. Notification of Certification:** Not less than quarterly, the Money Management Council shall prepare or cause to be prepared a list of all qualified depositories and the maximum amount of public funds that each is eligible to hold under Rule 11. This list shall be distributed to each public treasurer via US Postal Service or electronic means. Additions and deletions shall be made on the list for the next successive quarter.

**6.Examination of Qualified Depositories:** The Commissioner shall have the right to examine the books and records of any qualified depository if the Commissioner determines that such examination is necessary to ascertain the character and condition of its assets, its deposits and other liabilities, and its capital and to ensure compliance with the Money Management Act, the rules of the Money Management Council, and any order issued pursuant to an action of the Council.

**7.Grounds for Termination of Status as a Qualified Depository:** Any of the following events constitutes grounds for termination of a depository institution's status as a qualified depository and immediate relinquishment of all public funds deposits:

- A. Termination of the institution's federal deposit insurance.
- B. Failure to pay the annual certification fee.
- C. Failure to file the required financial reports.
- D. Failure to maintain a positive amount of capital as defined in Rule 11.4.B.
- E. Making any false statement or filing any false report with the Commissioner.
- F. Accepting, receiving or renewing deposits of public funds in excess of the maximum amount of public funds allowed.
- G. Failure to comply with a written order issued by the Commissioner pursuant to Section 51-7-18.1(7) within 15 days of receipt thereof.
- H. Request by a depository institution to be removed from the list of qualified depositories.

**8.Procedures for Termination and Reinstatement of Status as a Qualified Depository**

- A. If the Money Management Council determines that the grounds for termination of a depository institution's status as a qualified depository exist, upon the vote of at least three members of the Money Management Council, a depository institution may be terminated as a qualified depository. Termination will be effective upon service of notice to the institution of the Council's action. Notice of termination will state the grounds upon which the Council acted and the remedies required to cure the violation.
- B. From and after the date of service of notice of termination as a qualified depository, the institution shall not accept, receive or renew any deposits of public funds until specifically authorized in writing by the Commissioner and all existing accounts shall be transferred to a qualified depository.
- C. An institution may be reinstated as a qualified depository upon the written authorization of the Commissioner, if it has

corrected the violation which constituted grounds for termination.

## **RULE 13: Collateralization of Public Funds**

**1. Authority:** This rule is issued pursuant to Sections 51-7-18.1 (5).

**2. Scope:** This rule applies to all qualified depositories required to pledge collateral security for public funds.

**3. Purpose:** The purpose of this rule is to establish the requirements for pledging of collateral security to insure that public treasurers have a perfected security interest in the collateral security pledged, to define the conditions under which the Council may require the pledging of collateral security in lieu of relinquishment of deposits in excess of the maximum amount a qualified depository may hold under the Money Management Act and the rules of the Council, and to impose restrictions on a qualified depository which is required to pledge collateral security for the public deposits which it holds.

### **4. Definitions**

**A. Deposits means** balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

**B. Designated trustee means** the trustee selected to serve as the agent of the State Treasurer to hold and administer collateral security pledged for public funds.

**C. Eligible collateral means** obligations of or fully guaranteed by the United States or its agencies as to principal and interest, a segregated earmarked deposit account, or notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a federal reserve bank, obligations of the State of Utah or any of its political subdivisions, and readily marketable bonds, notes or debentures.

**D. Excess deposit means** that portion of the public funds held on deposit with a qualified depository by public treasurers which exceeds the most recently adopted maximum amount of public funds allowed pursuant to the Money Management Act and the rules of the Money Management Council as of the effective date of an order issued by the Commissioner of Financial Institutions pursuant to Section 51-7-18.1(6).

**E. Market value means** the bid or closing price listed for financial instruments in a regularly published listing or an electronic reporting service or, in the case of obligations which are not regularly traded, the bid price received from at least one registered securities broker/dealer.

**F. Readily marketable bonds, notes or debentures means** obligations in the form of a bond, note, or debenture rated in one of the three highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

### **5. General Rule**

#### **A. Conditions Under Which Collateral Will Be Allowed**

(1) The Money Management Council may vote to allow collateral security to be pledged to secure excess deposits when a qualified depository has accepted and holds public funds in excess of its public funds allotment.

(2) If the public funds allotment is reduced to one times capital, the Money Management Council may vote to allow collateral security to be pledged to secure excess deposits. The qualified depository will not be precluded or prohibited from accepting, renewing or maintaining deposits of public funds if the total amount of deposits from each public treasurer does not exceed the applicable federal deposit insurance limit.

(3) If the public funds allotment is reduced to zero, the qualified depository will be required to pledge sufficient eligible collateral with the state treasurer's designated trustee for all uninsured deposits. The qualified depository is not precluded or prohibited from accepting, renewing or maintaining deposits of public funds when the total amount of all deposits from each public treasurer does not exceed the applicable federal deposit insurance limit. After the effective date of any order requiring the pledging of collateral, the qualified depository may not accept, receive or renew uninsured deposits of public funds.

(4) If the amount of capital as defined in Rule 11.4.B. is zero or less, the institution is no longer a qualified depository and must relinquish all deposits of public funds within 15 days of the effective date of any order issued by the Commissioner of Financial Institutions requiring relinquishment.

(5) The requirements for pledging of collateral set forth in this rule shall remain in effect until the public funds allotment has been increased to the statutory maximum or (12) months, whichever occurs first. If at the end of the 12 month period the qualified depository institution's public funds allotment has not been increased to the statutory maximum, the qualified depository shall immediately relinquish all excess deposits.

**B. Delivery of Collateral.** Within 15 days of the effective date of an order requiring collateralization of excess deposits in accordance with the provisions of this rule, a qualified depository shall deliver to the state treasurer or the designated trustee eligible collateral sufficient to meet the statutory collateralization requirements and shall execute a pledge agreement and trust indenture as required by the state treasurer. Collateral delivered to the state treasurer or the designated trustee may not be released until the state treasurer has received written confirmation from the Commissioner of Financial Institutions that the excess deposits have been surrendered or that the qualified depository is eligible to accept, receive and hold public funds without collateralization.

## **R628-15. Certification as an Investment Adviser.**

### **1. Authority.**

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

### **2. Scope.**

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

### **3. Purpose.**

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

### **4. Definitions.**

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified Dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

4. "Approved list of brokers and dealers" means broker-dealers approved by a certified investment adviser to transact business on a public treasurer's account regardless of status as a certified dealer.

### **5. General Rule.**

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and

become a Certified investment adviser or Investment adviser representative under the Act.

## **6. Criteria for Certification of an Investment Adviser.**

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 clearly designating:

- (1) the investment adviser;
- (2) its designated official as defined in R164-4-2 of the Division; and
- (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Applicant shall provide written evidence of insurance coverage as follows:

(1) fidelity coverage based on the following schedule:

Utah Public funds under management	Percent for Bond
\$0 to \$25,000,000	10% but not less than \$1,000,000
\$25,000,001 to \$50,000,000	8% but not less than \$2,500,000
\$50,000,001 to \$100,000,000	7% but not less than \$4,000,000
\$100,000,001 to \$500,000,000	5% but not less than \$7,000,000
\$500,000,001 to \$1.250 billion	4% but not less than \$25,000,000
\$1,250,000,001 and higher	Not less than \$50,000,000

(2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

C. provide to the Division at the time of application or renewal of application, its most recent annual audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles in accordance with R628-15-8A.

D. Pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

E. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

F. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by the financial statements audited according to subsection R628-15-6(C).

G. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

H. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

I. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

(1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;

(2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);

(3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

#### **7. Use of an Adviser's Approved list of Broker-Dealers.**

If an investment adviser intends to use their own approved list of brokers-dealers, those broker-dealers on the adviser's approved list must qualify under SEC Rule 15C3-1 or other applicable regulatory requirements.

#### **8. Certification.**

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

#### **9. Renewal of Application.**

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

#### **10. Post Certification Requirements.**

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall provide and maintain written evidence of insurance coverage and shall maintain insurance coverage as described in R628-15-6(B).

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall use their approved list of broker-dealers or certified dealers in the best interest of the public treasurer's account for which they are transacting business when allocating transactions to broker-dealers.

I. Any value from transacting on a public treasurer's account accrued to the investment adviser, including soft dollar credits, for allocating transactions to broker-dealers must be paid back to the public treasurer's account. In addition, Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

- (1) copies of all trade confirmations for transactions in the account;
- (2) a summary of all transactions completed during the reporting period;
- (3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;
- (4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and
- (5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

## **11. Notification of Certification.**

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

## **12. Grounds for Denial, Suspension or Termination of Status as a Certified investment adviser.**

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as an investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

## **13. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.**

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Title 63G Chapter 4 ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

## **RULE 16: Certification as a Dealer**

**1. Authority:** This rule is issued pursuant to Sections 51-7-3(1) and 51-7-18.

**2. Scope:** This rule establishes the criteria applicable to all broker-dealers and agents for certification by the Director of the Securities Division of the Department of Commerce (the "Director") as eligible to conduct investment transactions under the State Money Management Act. It further establishes the application contents and procedures, and the procedures for termination and reinstatement of certification.

**3. Purpose:** This rule establishes a uniform standard to evaluate the financial condition and the standing of a broker-dealer to determine if investment transactions with public treasurers by such broker-dealers would expose public funds to undue risk.

**4. Definitions:** The following terms are defined in Section 51-7-3 of the State Money Management Act, and when used in this rule, have the same meaning as in the Act:

- A. "Certified dealer";
- B. "Council";
- C. "Director"; and
- D. "Public treasurer"

The following terms are defined in Section 61-1-13 of the Utah Uniform Securities Act, and when used in this rule, have the same meaning as in that Act:

- A. "Agent".

**5. General Rule:** No public treasurer may conduct any investment transaction through a broker-dealer or any agent representing such broker-dealer unless such broker-dealer has been certified by the Director as eligible to conduct investment transactions with public treasurers.

### **6. Application to Become a Certified Dealer**

A. Any broker-dealer wishing to become a certified dealer under the State Money Management Act must submit an application to the Utah Securities Division.

B. The application must include:

1. Primary Reporting Dealers: Proof of status as a primary reporting dealer, including proof of recognition by the Federal Reserve Bank as such, if applicant is a primary reporting dealer.

2. Office Address: The address of the applicant's principal office. Broker-dealers who are not primary reporting dealers must have and maintain an office and a resident principal in Utah; the application shall include the address of the Utah office and the identity of the resident principal.

3. Broker-Dealer Registration: Proof of registration with the Division under its laws and rules, effective as of date of the application, of the following: (a) the broker-dealer; (b) its resident

principal (if one is required); and (c) any agents of a firm doing business in the state.

4. Corporate Authority: A Certificate of Good Standing, obtained from the state in which the applicant is incorporated. An applicant who is a foreign corporation also must submit a copy of its Certificate of Authority to do business in Utah, obtained from the Corporations Division of the Department of Commerce (hereinafter the "Corporations Division").

5. Financial Statements: With respect to applicants who are not primary reporting dealers, financial statements, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, indicating that the applicant has, as of its most recent fiscal year end:

(a) Net Capital: Minimum net capital, as calculated under rule 15c3-1 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (the Uniform Net Capital Rule), of at least five percent (5%) of the applicant's aggregate debt balances, as defined in the rule, and;

(b) Total Capital: Total capital as follows: (i) of at least \$10 million or; (ii) of at least \$25 million, calculated on a consolidated basis, with respect to an applicant which is a wholly-owned subsidiary.

6. Government Securities Act Registration: Proof of the firm's registration under the Government Securities Act of 1986 (100, Stat 3208).

7. Account Documents: Copies of all agreements, contracts, or other documents that the applicant requires or intends to require to be signed by the public treasurer to open or maintain an account. Such documents must meet the following requirements: (a) The Director shall not certify any applicant who requires, or proposes to require, that any dispute arising out of transactions between the applicant and the public treasurer must be submitted to arbitration. The applicant must provide copies of agreements signed or to be signed, which allow the public treasurer to select the forum for dispute resolution, whether that forum be arbitration mediation or litigation in any state or federal court. (b) Any such customer agreement shall provide that suit may be litigated in a Utah court, and that Utah law shall apply in settling disputes, where relevant.

8. Knowledge of Money Management Act: A notarized statement, signed by a principal and by any agent who has any contact with a public treasurer or its account, that the agent is familiar with the authorized investments as enumerated in Section 51-7-11(3) and the rules of the Council, and with the investment objectives of the public treasurer, as set forth in Section 51-7-17(1).

9. Fee: A non-refundable fee as described in Section 51-7-18.3(2), payable to the Division.

## **7. Certification**

A. Initial Certification: The initial application for certification must be received on or before the last day of the month for approval at the following month's council meeting.

B. Date of Effectiveness: All certifications shall be effective upon approval by the council.

C. Expiration; Renewal: All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed. Renewal applications must be received on or before April 30 of each year.

#### **8. Renewal of Application**

A. Certified dealers wishing to retain their status as certified dealers must reapply annually, on or before April 30 of each year, for recertification to be effective July 1 of each year.

B. The renewal application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The renewal application must be accompanied by an annual renewal fee as described in section 51-7-18.3(2).

**9. Post Certification Requirements:** Certified dealers are required to notify the Division of any changes to any items or information contained in the original application within 20 calendar days of the change. Such notification shall provide copies, where necessary, of relevant documents.

**10. Notification of Certification:** The Director shall provide a list of certified broker-dealers and agents to the Money Management Council at least semiannually. The Council shall mail this list to each public treasurer.

**11. Grounds for Suspension or Termination of Status as a Certified Dealer:** Any of the following constitutes grounds for suspension or termination of status as a certified dealer:

A. Termination of the dealer's status as a primary reporting dealer if the dealer gained certification as a primary reporting dealer.

B. Denial, suspension or revocation of the dealer's registration under the Government Securities Act, or by the Division, or by any other state's securities agency.

C. Failure to maintain a principal office operated by a resident registered principal in this state, if applicable.

D. Failure to maintain registration with the Utah Securities Division by the firm or any of its agents having any contact with a public treasurer.

E. Failure to remain in good standing in Utah with the Corporations Division, or to maintain a certificate of authority, as applicable.

F. Failure to submit within 10 day of the due date the required financial statements, or failure to maintain the required minimum net capital and total capital.

G. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

H. The sale, offer to sell, or any solicitation of a public treasurer by an agent or by a resident principal, where applicable, who is not certified.

I. Failure to pay the annual renewal fee.

J. Making any false statement or filing any false report with the Division.

K. Failure to file amended reports as required in section R628-16-9.

L. The sale, offer to sell, or any solicitation of a public treasurer, by the certified dealer or any of its employees or agents, of any

instrument or in any manner not authorized by the Money Management Act or rules of the Council.

M. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

N. Failure to maintain registration under the federal Government Securities Act.

O. Engaging in a dishonest or unethical practice in connection with any investment transaction with a public treasurer. "Dishonest or unethical practice" includes, but is not limited to, those acts and practices enumerated in Rule 164-6-1g, which is incorporated herein.

## **12. Procedures for Suspension or Termination and Reinstatement of Status**

A. Where it appears to the Division or to the Council that grounds may exist to suspend a certified dealer or terminate status as a certified dealer, the Council shall proceed under the Utah Administrative Procedures Act, Title 63G Chapter 4 of the Utah Code.

B. All proceedings to suspend a certified dealer or to terminate status as a certified dealer are hereby designated as informal proceedings under the Utah Administrative Procedures Act.

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. At the election of the presiding officer, other members of the Council may issue recommendations to the hearing officer after the close of the hearing.

D. The Notice of Agency Action, or any petition filed in connection with it, required under the Utah Administrative Procedures Act, shall include a statement of the grounds for termination, and the remedies required to cure the violation.

E. After the date of service of the Notice of Agency Action, the certified dealer and its agents shall not conduct any investment transaction with any public treasurer if so ordered by the Money Management Council. The order issued by the hearing officer at the conclusion of the proceedings shall lift this prohibition if the order allows the certified dealer to keep its status as a certified dealer.

## **Rule 17: Limitations on Commercial paper and Corporate notes**

**1. Authority:** This rule is issued pursuant to Section 51-7-18(2) (b) .

**2. Scope:** This rule establishes limits on the dollar amount of public funds that a public treasurer may invest in commercial paper or corporate obligations of a single issuer.

**3. Purpose:** The purpose of this rule is to provide guidelines for treasurers when investing public funds in commercial paper or corporate obligations. The guidelines established by this rule are designed to be flexible enough to allow public treasurers to receive competitive market rates on funds placed in these types of investment instruments while maintaining sufficient protection from loss.

### **4. Definitions: For the purpose of this rule:**

Commercial paper means: an unsecured promissory note that matures on a specific date, and is issued by industrial, utility, and finance companies. The commercial paper must meet the criteria for investment as described in section 51-7-11(3) .

Corporate obligation means: A secured or unsecured note with original term to maturity ranging from nine months to thirty years that is issued by an industrial, utility or finance company. The corporate obligation must meet the criteria for investment as described in section 51-7-11(3) .

**4. General Rule:** The maximum amount of any public treasurers portfolio which can be invested in a single issuer of commercial paper and corporate obligations shall be as follows:

1. Portfolios of \$10,000,000 or less may not invest more than 10% of the total portfolio with a single issuer.
2. Portfolios greater than \$10,000,000 but less than \$20,000,000 may not invest more than \$1,000,000 in a single issuer.
3. Portfolios of \$20,000,000 or more may not invest more than 5% of the total portfolio with a single issuer.

The amount or percentages used in determining the amount of commercial paper and or corporate obligations a treasurer may purchase, shall be determined by the book value of the portfolio at the time of purchase.

**Rule 18: Conditions and Procedures for Use of Interest Rate Contracts**

**1. Authority:** This rule is issued pursuant to Section 51-7-18(2) (b) (viii) .

**2. Purpose:** The purpose of this rule is to establish conditions and procedures for the use by public entities of Contracts (as defined in R628-18-3). This rule does not cover instruments such as futures, options, (other than options to enter into swaps), calls or puts entered into for investment purposes, as they are not legal investments under the Act. This rule provides criteria for the use of Contracts, permitted contract terms and the type of contract form to be used. This rule also provides credit criteria for depository institutions, broker dealers, insurance companies and other entities that are counterparties to Contracts, reporting requirements on Contracts and penalties for violation of this rule.

**3. Definitions:** For purposes of this rule:

(1) Contract(s) means: interest rate exchange or swap contracts, cash flow exchange or swap contracts, any derivatives of these contracts including forward swaps and options to enter into swaps, and interest rate floors, caps and collars that are entered into by a public entity.

(2) Counterparty means: any party to a Contract who has obligations or rights thereunder.

(3) Governing Board means: the board, town council, city council, etc. of a public entity which would oversee the issuing of debt and the management of that debt.

(4) Intermediary Contract means: A Contract that is structured such that any payment owed by any counterparty to any other counterparty is to be made through a person or entity that is not a counterparty to the Contract, where the funds constituting such payment are either, (i) subject to the control of such person or entity; or (ii) subject to execution by the creditors of such person or entity.

(5) Intermediary means: a person or entity that is not a counterparty to a given Intermediary Contract through whom any payment is to be made by a counterparty to any other counterparty as contemplated under the immediately preceding subsection (4).

(6) Notional Amount means: the dollar amount against which a rate is applied to determine the dollar amount payable or receivable by a counterparty under a Contract.

**4. General Requirements:** Contracts shall be entered into only under the following conditions:

(1) The Governing Board shall first determine that the Contract or arrangement or a program of Contracts: (a) is designed to reduce the amount or duration of payment, rate, spread or similar risk, or (b) is reasonably anticipated to result in a lower cost of borrowing.

(2) Contracts are to be utilized for the control or management of debt or the cost of servicing debt and not for speculation.

**5. Credit Criteria Restriction on Counterparties:** Public entities may enter into contracts only with the following counterparties:

(1) Any in-state depository institution that meets the criteria of a qualified depository as described in Sections 51-7-3(28), 51-7-18.1 and Rule 628-12.

(2) Any out-of-state depository institution that meets the criteria of Rule 628-10.

(3) Any broker dealer that: (i) is either a primary reporting dealer recognized by the Federal Reserve Bank of New York or meets the criteria of Rule 628-16-6(B) (5) and (6), without regard to whether such broker dealer has applied for certification or been certified as contemplated under 628-16, and (ii) is rated, or whose parent company is rated, in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in section 51-7-3(20).

(4) Any insurance company whose claims paying ability is rated or that has issued currently outstanding debt that is rated in one of the highest three rating categories by at least two Nationally Recognized Statistical Rating Organizations as defined in section 51-7-3(20).

(5) Any entity that is directly or indirectly wholly owned by an entity or entities described in any of the immediately preceding subsections (1) through (4).

(6) Any entity that is directly or indirectly wholly owned by a holding company or parent company which directly or indirectly wholly owns any entity described in the immediately preceding subsections (1) through (4).

(7) Any entity in the business of entering into Contracts that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection(7), the Contract's final maturity may not exceed eighteen years if the counterparty is not rated in the highest rating category for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty is not rated in one of the two highest rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

(8) Any entity whose obligations under the Contract with the public entity are fully and unconditionally guaranteed by an entity that is rated in one of the highest three rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20), provided that if a public entity enters into a Contract under authority of this Subsection (8), the Contract's final maturity may not exceed eighteen years if the counterparty's guarantor is not rated in the highest rating category for two Nationally Recognized Statistical

Rating Organizations as defined in Section 51-7-3(20), and may not exceed nine years if the counterparty's guarantor is not rated in one of the highest two rating categories for counterparties, financial programs, or senior debt by at least two Nationally Recognized Statistical Rating Organizations as defined in Section 51-7-3(20).

**6. Authorized Intermediaries.** A public entity shall not enter into an Intermediary Contract unless each Intermediary thereunder is either:

- (1) a qualified depository as defined in section 51-7-3(28);
- (2) a permitted depository as defined in section 51-7-3(24); or
- (3) a certified dealer as defined in section 51-7-3(2).

**7. Terms of the Contract and type of Contract.**

(1) To eliminate speculation, the Notional Amount of a Contract cannot exceed 115 percent of the par amount of the debt to which such Contract relates. Nothing in these rules shall be deemed to prohibit a public entity from entering into a subsequent Contract to reverse a position taken in a prior Contract so long as the subsequent Contract otherwise complies with these rules.

(2) The final termination date of a Contract shall not be later than 90 days past the final maturity of the debt to which such Contract relates.

(3) The public entity must use an industry standard contract form approved by the International Swaps and Derivatives Association Inc., which is currently headquartered in New York City, New York (ISDA), but may make such modifications thereto as are contemplated or permitted by the ISDA form or any ISDA code incorporated therein.

**8. Reporting Requirements and Penalty for Violation by a Public Treasurer.**

(1) Pursuant to section 51-7-18.2(2)(d), the public treasurer of each public entity that is a party to any outstanding Contract must submit a report to the council within 30 days after June 30 and December 31 of each year containing the following information as of the immediately preceding June 30 or December 31, as applicable:

- (a) A listing of all outstanding Contracts to which the public entity is a party;
- (b) the Notional amount of each Contract, if applicable;
- (c) the underlying debt to which each Contract relates;
- (d) the type of each Contract e.g., interest rate exchange or swap contract, cash flow exchange or swap contract or, if the Contract is a derivative of the foregoing, forward swap, option to enter into a swap, floor, cap, collar, or other derivative and;
- (e) a description of the basis upon which the public entity's payment obligations are determined under each Contract.

(2) Any public entity that willfully violates the provisions of this rule is guilty of a Class A misdemeanor.

(3) Any public entity that knowingly makes or causes to be made a false statement or report to the council is guilty of a class A misdemeanor.

## **Rule 19.**

### **Requirements for the use of Investment Advisers by Public Treasurers**

1. **Authority.** This rule is issued pursuant to Section 51-7-18(2)(b).

2. **Scope.** This rule establishes basic requirements for public treasurers when using investment advisers.

3. **Purpose.** The purpose of this rule is to outline requirements for public treasurers who are considering utilizing investment advisers to invest public funds.

#### **4. Definitions.**

(1) The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

- (a) "Certified investment adviser";
- (b) "Council";
- (c) "Director"; and
- (d) "Investment adviser representative".

(2) For purposes of this rule:

(a) "Investment adviser" means either a federal covered adviser as defined in Section 51-1-13 or an investment adviser as defined in Section 61-1-13.

#### **5. General Rule.**

1. A public treasurer may use an investment adviser to conduct investment transactions on behalf of the public treasurer as permitted by statute, rules of the Council, and local ordinance or policy.

2. A public treasurer using an investment adviser to conduct investment transactions on behalf of the public treasurer is responsible for full compliance with the Act and rules of the Council.

3. Due diligence in the selection of an investment adviser and in monitoring compliance with the Act and Rules of the Council and the performance of investment advisers is the responsibility of the public treasurer. (The Council advises public treasurers that reliance on certification by the Director may not be sufficient to fully satisfy prudent and reasonable due diligence.)

4. The public treasurer shall assure compliance with the following minimum standards:

(a) A public treasurer may use a Certified investment adviser properly designated pursuant to R628-15.

(b) A public treasurer's use of a Certified investment adviser shall be governed by a written investment advisory services agreement between the public treasurer and the Certified investment adviser. Terms of the agreement shall conform to the requirements of R628-15, and shall be adopted pursuant to all procurement requirements of statute and local ordinance or policy.

(c) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish, the SEC Form ADV Part II for review and consideration by the public treasurer.

(d) All investment transactions and activities of the public treasurer and the Certified investment adviser must be in full compliance with all aspects of the Money Management Act and Rules of the Council particularly those requirement governing criteria for investments, safekeeping, utilizing only certified dealers or qualified

dealers, and purchasing only the types of securities listed in 51-7-11, 51-7-12 and 51-7-13, as applicable.

(e) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish a clear and concise explanation of the investment adviser's program, objectives, management approach and strategies used to add value to the portfolio and return, including the methods and securities to be employed.

5. If a selection of a Certified investment adviser to provide investment advisory services to a public treasurer is based upon the investment adviser's representation of special skills or expertise, the investment advisory services agreement shall require the Certified investment adviser to act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

6. The public treasurer is advised to review and consider standard of practice recommended by other sources, such as the Government Finance Officers Association, in the selection and management of investment adviser services.

#### **6. Reporting to the Council.**

When a public treasurer has contracted with an investment adviser for the management of public funds, the public treasurer shall provide the detail of those investments to the Council, pursuant to Section 51-7-18.2.