PG-5.320: INVESTMENT OF FUNDS

Commented [SLHA1]: This policy was prepared to address the specific legal requirements identified herein. If any statement is revised, you should consult Firm attorneys to ensure that the revision does not inadvertently result in the risk of noncompliance. Importantly, any content citing to a legal requirement should only be revised after consulting legal counsel.

Commented [SLHA2R1]: To the degree appropriate, the comments herein should be retained for the Board's review. Once adopted, all comments should be deleted.

Commented [SLHA3]: Instead of School, use Academy, District or an abbreviated name specific to the charter school. If a term other than "School" is used, search and replace School with the new term. However, in doing so, ensure that the policy statement reads properly.

Sec. 1. PURPOSE OF POLICY.

Through this policy, the Board of Directors (hereafter, the "Board") of **Midland Academy Charter** doing business as **Midland Academy Charter** (hereafter, the "School") shall address the legal requirements, as applicable, promulgated at:

(a) Texas Business Organizations Code ("Tex. Bus. Org. Code") Sections 3.101 and 22.201;
(b) Texas Education Code ("Tex. Ed. Code") Section 12.1053(b)(3);
(c) Texas Government Code ("Tex. Gov't. Code") Sections 2256.009 through 2256.016;
(d) Texas Administrative Code, Title 19 ("19 TAC"), §100.1045; and
(e) Financial Accountability System Resource Guide ("FASRG").

Additionally, through this policy, the Board shall address best practices adopted by public schools.

Sec. 2. AUTHORITY OVER FISCAL MATTERS.

Sec. 2.1. In accordance with state law, the Board has primary and ultimate authority over fiscal matters. If a matter or decision-making process is not addressed in this or other duly adopted policies of the Board, authority rests with the Board. In the event of a conflict between this policy and any other Board policy, such conflict shall be brought to the Board for resolution. Refer to the Board's Policy relating to its Authority Over Fiscal Matters (the "Controlling Policy") for requirements applicable to this policy.

Sec. 2.2. The Delegate, as defined in Sec. 3.2 of the Controlling Policy, shall report to the Board any business arrangement or transaction with an individual that is an officer, as defined in Sec. 5 of the Controlling Policy, and any conflicted,[1] interested[2] or related[3] party, as defined in other Board policy or applicable law. The School and its officers may not enter into a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement.

Sec. 2.3. As established in Sec. 4 of the Controlling Policy, where the Delegate is authorized to confer authority to a designee (as denoted by the phrase "or designee"), the Delegate may confer such authority to a single designee.

[1] Tex. Ed. Code § 12.1054; 19 TAC §§ 100.1131 through 100.1135
[2] 19 TAC § 100.1047(f)
[3] Tex. Ed. Code § 12.1166

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 3. INVESTMENT OBJECTIVES.[4]

In general, the Board and Delegate shall observe, in the priority order listed in this Sec. 3, the following objectives when investing funds:

(a) Preservation and safety of principal;
(b) Liquidity; and
(c) Yield.

Sec. 4. ACCOUNT MAINTENANCE.[5]

The Delegate or designee shall ensure that investments are maintained in discrete and distinct accounts that separate funds pertaining to non-School activities, functions, programs and services from public funds.

Sec. 5. INVESTMENT RECORDS.[6]

The Delegate or designee shall ensure that the School creates and maintains accurate and complete records of any and all investments of School funds.

Sec. 6. CONTRACTUAL CONSIDERATIONS.[7]

The Delegate shall ensure that investments are made in accordance with any applicable provision or covenant contained in a debt instrument, bond indenture, or similar agreement.

Sec. 7. AUTHORIZATION THRESHOLDS.[8]

Subject to the Board's final authority over the use of public funds, the Delegate or designee is authorized to invest an amount not exceeding $50,000 for a period not exceeding one (1) year in the authorized investments identified in this policy. Otherwise, the Delegate or designee shall recommend to the Board any investment of surplus cash exceeding $50,000 or for a period exceeding one year.

Commented [SLHA4]: This amount corresponds with that in Tex. Ed. Code §44.031(a) but may be increased or decreased as deemed appropriate by the Board. However, state law and rule do not explicitly allow the Board to delegate this authority to the Delegate so any increase of this amount should be conservative.

Commented [SLHA5]: See prior comment.

[4] 19 TAC §100.1045(c)(1)
[5] 19 TAC §100.1045(b)(2)
[6] Tex. Bus. Org. Code §22.352(a); Tex. Ed. Code §12.115(a)(2); 19 TAC §§ 100.1033(c)(1)(A)(vi)100.1047(b)(1)
[7] 19 TAC §100.1045(b)(3)
[8] 19 TAC §100.1033(b)(14)(C)(ii); Consistent with Tex. Gov't. Code §2256.003

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 8. AUTHORIZED INVESTMENTS.

The Board and Delegate or designee may purchase, sell and invest public funds in the following authorized investments.[9]

Sec. 8.1. Obligations of or Guaranteed by a Governmental Entity.[10] Except as provided by Sec. 8.2 of this policy, the following are authorized investments under this subsection.

(a) Obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks.

(b) Direct obligations of the State of Texas or its agencies and instrumentalities.

(c) 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.

(d) Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas, the United States, or their respective agencies or instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation ("FDIC") or by the explicit full faith and credit of the United States.

(e) 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.

(f) Bonds issued, assumed, or guaranteed by the State of Israel.

(g) Interest-bearing banking deposits that are guaranteed or insured by:

(1) the FDIC or its successor; or

(2) the National Credit Union Share Insurance Fund ("NCUSIF") or its successor.

(h) Interest-bearing banking deposits other than those described by (g) above if:

(1) the funds invested in the banking deposits are invested through:

[9] Tex. Ed. Code §12.1053(b)(3)
[10] Tex. Gov't. Code §2256.009(a)

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

(A) a broker with a main office or branch office in the State of Texas that the School selects from a list the Board, or, if so designated, an investment committee, adopts as required by Tex. Gov't. Code §2256.025; or

(B) a depository institution with a main office or branch office in the State of Texas that the School selects;

(2) the broker or depository institution selected as described by (h)(1) arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the School's account;

(3) the full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality of the United States; and

(4) the School appoints as its custodian of the banking deposits issued for the School's account:

(A) the depository institution selected as described by (h)(1);

(B) an entity described by Tex. Gov't. Code §2257.041(d); or

(C) a clearing broker dealer registered with the Securities and Exchange Commission ("SEC") and operating under SEC Rule 15c3-3.

Sec. 8.2. Prohibited Investments.[11] The following investments are prohibited.

(a) Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.

(b) Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.

(c) Collateralized mortgage obligations that have a stated final maturity date of greater than ten (10) years.

(d) Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

[11] Tex. Gov't. Code §2256.009(b)

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 8.3. Certificates of Deposit and Share Certificates.[12] A certificate of deposit or share certificate is an authorized investment under this policy if the certificate is issued by a depository institution that has its main office or a branch office in the State of Texas and is:

(a) guaranteed or insured by the FDIC or its successor or the NCUSIF or its successor;

(b) secured by obligations authorized in Sec. 8.1 of this policy, 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, excluding those mortgage backed securities of the nature described by Sec. 8.2 of this policy; or

(c) secured accordance with Tex. Gov't. Code Chapter 2257 or in any other manner and amount provided by law for deposits of the School.

Sec. 8.4. Other Authorized Form for Certificates of Deposit and Share Certificates.[13] An investment in a certificate of deposit is authorized under this subsection if it is made under the following conditions:

(a) the funds are invested by the School entity through;

    (1) a broker that has its main office or a branch office in the State of Texas and is selected from a list adopted by the School in accordance with Tex. Gov't. Code §2256.025; or

    (2) a depository institution that has its main office or a branch office in the State of Texas and that is selected by the School;

(b) the broker or the depository institution selected by the School under (a)(1) above arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the School;

(c) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and

(d) the School appoints the depository institution selected by the School under (a)(1) above, an entity described by Tex. Gov't. Code §2257.041(d), or a clearing broker-dealer registered with the SEC and operating pursuant to SEC Rule 15c3-3 as custodian for the School with respect to the certificates of deposit issued for the account of the School.

[12] Tex. Gov't. Code §2256.010(a)
[13] Tex. Gov't. Code §2256.010(b)

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 8.5. Repurchase Agreements.[14] A fully collateralized repurchase agreement is an authorized investment under this subsection if the repurchase agreement:

(a) has a defined termination date;

(b) is secured by a combination of cash and obligations authorized at Sec. 8.1(a) or 8.8 of this policy;

(c) requires the securities being purchased by the School or cash held by the School to be pledged to the School, held in the School's name, and deposited at the time the investment is made with the School or with a third party selected and approved by the School; and

(d) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in the State of Texas.

Sec. 8.5.1. *Repurchase Agreement Defined*. For purposes of this policy, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described under Sec. 8.1(a) or 8.8 of this policy, 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.

Sec. 8.5.2. *Term of Agreement*. The term of any reverse security repurchase agreement may not exceed ninety (90) days after the date the reverse security repurchase agreement is delivered.

Sec. 8.5.3. *Use of Invested Funds*. Money received by the School 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.

Sec. 8.6. Securities Lending Programs.[15] A securities lending program is an authorized investment if it meets the following conditions:

(a) the value of the securities loaned is at least 100% collateralized, including accrued income;

(b) a loan made under the program must allow for termination at any time;

(c) a loan made under the program is secured by:

(1) pledged securities described in Sec. 8.1 of this policy;

[14] Tex. Gov't. Code §2256.011
[15] Tex. Gov't. Code §2256.0115

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

(2) pledged irrevocable letters of credit issued by a bank that is organized and existing under the laws of the United States or any other state and continuously rated by at least one nationally recognized investment rating firm at not less than "A" or its equivalent; or

(3) cash invested in accordance with Sec. 8.1, 8.8, 8.9, or 8.11 of this policy;

(d) the terms of the loan require that the securities being held as collateral be:

(1) pledged to the School;

(2) held in the School's name; and

(3) deposited at the time the investment is made with the School or with a third party selected or approved by the Board;

(e) the loan is placed through a primary government securities dealer, as defined at 5 CFR §6801.102(f), as that regulation existed on September 1, 2003, or a financial institution doing business in the State of Texas; and

(f) the agreement to lend securities has a term of one year or less.

Sec. 8.7. Banker's Acceptances.[16] A banker's acceptance is an authorized investment if it:

(a) has a stated maturity of 270 days or fewer from the date of its issuance;

(b) will be, in accordance with its terms, liquidated in full at maturity;

(c) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(d) 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.

Sec. 8.8. Commercial Paper.[17] Commercial paper is an authorized investment if it:

(a) has a stated maturity of 365 days or fewer from the date of issuance; and

(b) is rated not less than "A-1" or "P-1" or an equivalent rating by at least two (2) nationally recognized credit rating agencies or one (1) nationally recognized credit rating agency and

[16] Tex. Gov't. Code §2256.012
[17] Tex. Gov't. Code §2256.013

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

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.

Sec. 8.9. Mutual Funds.

Sec. 8.9.1. *No-load Money Market Mutual Funds*.[18] No-load money market mutual funds are an authorized investment if they:

(a) are registered with and regulated by the SEC;

(b) provide the School with a prospectus and other information required by the Securities and Exchange Act of 1934 (United States Code, Title 15 ("15 USC), Section 78a, et seq.) or the Investment Company Act of 1940 (15 USC §80a-1, et seq.); and

(c) complies with federal SEC Rule 2a-7 (17 CFR §270.2a-7), promulgated under the Investment Company Act of 1940 (15 USC §80a-1 et seq.).

Sec. 8.9.2. *No-load Mutual Funds*.[19] No-load mutual funds are an authorized investment if they:

(a) are registered with the SEC;

(b) have an average weighted maturity of less than two (2) years; and

(c) have a duration of one (1) year or more and either:

(1) is invested exclusively in obligations approved under Tex. Gov't. Code, Chapter 2256, Subchapter A; or

(2) the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

Sec. 8.9.3. *Prohibited Investments*.[20] The School may not invest:

(a) in the aggregate more than 15% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in no-load mutual funds;

(b) any portion of bond proceeds, reserves, and funds held for debt service, in no-load market mutual funds; or

[18] Tex. Gov't. Code §2256.014(a)
[19] Tex. Gov't. Code §2256.014(b)
[20] Tex. Gov't. Code §2256.014(c)

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

(c) 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 under Sec. 8.9.1 and 8.9.2 of this policy in an amount that exceeds 10% of the total assets of the mutual fund.

Sec. 8.10. Guaranteed Investment Contracts.[21] A guaranteed investment contract is an authorized investment for bond proceeds if the guaranteed investment contract:

(a) has a defined termination date;

(b) is secured by obligations authorized under Sec. 8.1(a) of this policy, excluding those obligations described by Sec. 8.2 of this policy, in an amount at least equal to the amount of bond proceeds invested under the contract; and

(c) is pledged to the School and deposited with the School or with a third party selected and approved by the Board.

Sec. 8.10.1. *Qualifying Requirements*. To be eligible as an authorized investment, the following requirements must be met.

(a) The Board specifically authorizes the guaranteed investment contract as an eligible investment in a resolution authorizing the issuance of bonds.

(b) The School must receive bids from at least three (3) separate providers with no material financial interest in the bonds from which the proceeds were received.

(c) The School must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received.

(d) The price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested.

(e) The provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Sec. 8.10.2. *Limitation to Contract Term*. Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested in a guaranteed investment contract with a term longer than five (5) years from the date of issuance of the bonds.

Sec. 8.11. Investment Pools.[22] An investment pool is an authorized investment if:

[21] Tex. Gov't. Code §2256.015
[22] Tex. Gov't. Code §2256.016

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

(a) the Board authorizes the investment in the particular pool through policy or resolution; and

(b) the investment pool only invests the funds that it receives in the investments authorized under Tex. Gov't. Code Chapter 2256, Subchapter A.

Sec. 8.11.1. *Receipt of Required Disclosure*. In order to invest in an investment pool, the Delegate or his designee must receive an offering circular or other similar disclosure instrument containing, at a minimum, the following information:

(a) the types of investments in which money is allowed to be invested;

(b) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;

(c) the maximum stated maturity date any investment security within the portfolio has;

(d) the objectives of the pool;

(e) the size of the pool;

(f) the names of the members of the advisory board of the pool and the dates their terms expire;

(g) the custodian bank that will safekeep the pool's assets;

(h) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;

(i) 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;

(j) the name and address of the independent auditor of the pool;

(k) the requirements to be satisfied for the School to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the School to invest funds in and withdraw funds from the pool;

(l) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios; and

(m) the pool's policy regarding holding deposits in cash.

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 8.11.2. *Continued Receipt of Required Disclosures*. In order to continue investing in the investment pool, the Superintendent or his designee must receive the following information:

(a) investment transaction confirmations; and

(b) a monthly report that contains, at a minimum, the following information:

(1) the types and percentage breakdown of securities in which the pool is invested;

(2) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;

(3) the current percentage of the pool's portfolio in investments that have stated maturities of more than one (1) year;

(4) the book value versus the market value of the pool's portfolio, using amortized cost valuation;

(5) the size of the pool;

(6) the number of participants in the pool;

(7) the custodian bank that is safekeeping the assets of the pool;

(8) a listing of the School's daily transaction activity;

(9) the yield and expense ratio of the pool, including a statement regarding how the yield is calculated;

(10) the portfolio managers of the pool; and

(11) any changes or addenda to the offering circular.

Sec. 8.11.3. *Yield Calculation*. In this section, for purposes of an investment pool for which a $1.00 net asset value is maintained, "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 SEC.

Sec. 8.11.4. *Monitoring of Investment Pool Compliance*. The Superintendent or his designee shall monitor the investment pool's compliance with Sec. 9.9.1, 9.9.2 and 9.9.3 above and Tex. Gov't. Code § 2256.016(f)-(k).

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 9. REPORT TO THE FINANCE COMMITTEE.[23]

At each meeting, the Delegate shall provide to the Finance Committee a report disclosing the status of any and all amounts invested under this policy. The Finance Committee may report to the Board its findings and make recommendations for the continued, discontinuation or other change in the School's investments.

Commented [SLHA6]: If a finance committee has not been formed, delete the reference to "Finance Committee" and replace it with "Board" or other appropriate committee.

Sec. 10. TRAINING AND UPDATES.[24]

The Delegate or designee shall properly train officers and employees on the requirements of this policy and any administrative procedure(s) adopted to implement this policy. Additionally, the Delegate or designee shall keep officers and employees informed of any changes to this policy and related requirements.

Sec. 11. ADMINISTRATIVE PROCEDURES.[25]

The Delegate shall formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law and rule. In doing so, the Delegate shall not adopt, and is prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Delegate shall confer with the Board or legal counsel before deviating from the requirements set forth in this policy. In the event that a deviation from this policy becomes necessary, the Delegate shall either recommend an amendment to this policy or the Board's approval of a specific deviation, including the purpose, scope and duration of the requested deviation.

Sec. 12. DATE ADOPTED AND EFFECTIVE.

As set forth in the pertinent minutes to the meeting of the Board, the Board adopted this policy on MDY and became effective on MDY.

Commented [SLHA7]: Insert the date for the meeting of the Board at which this policy was adopted.

Commented [SLHA8]: Insert the date that this policy became effective. If this policy became effective on the same date as adoption, insert "this date".

[23] FASRG Module 2

[24] 2 CFR § 200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

[25] Tex. Ed. Code § 12.115(a)(2); FASRG Module 2; 2 CFR § 200.303. Consistent with 19 TAC § 100.1033(b)(14)(C)(iv), the Board has the final authority to adopt policies governing charter school operations, including authorizing the Delegate or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in School's Articles of Incorporation and Bylaws and in accordance with Tex. Bus. Org. Code §§ 3.101 and 22.201, the Board is the School's governing authority and, as such, manages and directs School's business and affairs through Board actions, resolutions and policy.

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 13. RETENTION.[26]

This policy shall be retained until superseded, expired, or discontinued and for five (5) years thereafter.

Sec. 14. CERTIFICATION.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to the Authorization for the Obligation and Expenditure of Funds, as originally adopted by the Board on 09/20/2022, which Policy is in full force and effect and has not been revoked or amended.

_____
Print
Name:_____
Secretary

_____
Date Certified

[26] Tex. Ed. Code § 12.1052; 19 TAC § 100.1203; *See* Record Number GR1000-38 and GR1025-25 in Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition (Effective April 17, 2016) adopted by the Texas State Library and Archives Commission at Texas Administrative Code, Title 13, § 7.125(a)(1).

© 2022 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.