

PART 201

ACCOUNTING, REPORTING AND SUPERVISION REQUIREMENTS FOR PUBLIC AUTHORITIES

(Statutory authority: Constitution, art. X, § 5; Public Authorities Law, art. 9, §§ 2800 to 2985; State Finance Law § 8 [14])

Sec.

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§ 201.1 Purpose, definitions and scope of Part.

(a) Purpose. The purpose of this Part is to set forth the accounting, reporting and supervision requirements for all public authorities and other public corporations covered by this Part. The following terms are defined as follows for the purposes of this Part:

(1) Affiliate or affiliated with shall mean a corporate body or company controlling, controlled by, or under common control with another corporate body.

(2) Subsidiary shall mean a corporate body or company: (i) having more than half of its voting shares owned or held by a public authority or other public corporation covered by this Part; or (ii) having a majority of its directors, trustees or members in common with the directors, trustees or members of a public authority or other public corporation covered by this Part or as designees of a public authority or other public corporation covered by this Part.

(b) Scope. This Part applies to all public authorities and other public corporations created by or existing under any law of the state of New York, including any and all affiliates and subsidiaries of such public authorities or public corporations, other than:

(1) a public authority or other public corporation created pursuant to agreement or compact with another state or with a foreign power, except where the parties to such agreement or compact have consented to the supervision of the authority's or corporation's accounts by the State Comptroller;

(2) a local authority as defined in section 2 of the Public Authorities Law.

§ 201.2 Reporting and accounting requirements.

Each public authority referred to in section 201.1(b) of this Part shall submit the following:

(a) the annual report of the public authority;

(b) a transmittal letter from the public authority's chairperson or chief executive officer, representing that the report is complete and has been prepared in conformity with this Part;

(c) The public authority's basic financial statements prepared in accordance with accounting principles generally accepted in the United States of America. Since public authorities are governmental entities, the

accounting principles followed should be those prescribed by the Governmental Accounting Standards Board or its successors and should be applied on a consistent basis. If a public authority's basic financial statements will reflect a change in an accounting principle or principles that requires disclosure in the notes to the financial statements, the public authority must present a plan to implement a change in an accounting principle or principles to the State Comptroller not later than 30 days after the end of the public authority's fiscal year for which such change is planned. The plan to implement a change in an accounting principle or principles must set forth the reasons for the change and be accompanied by a letter from the public authority's current financial statement auditor indicating that the planned change in an accounting principle or principles would be considered an improvement in financial reporting in accordance with accounting principles generally accepted in the United States of America. No change in an accounting principle or principles may be implemented by a public authority specified in this Part without prior approval by the State Comptroller. From time to time, the State Comptroller may issue accounting directives to public authorities prescribing a specific method of implementing an accounting principle or the time of implementation. A public authority's basic financial statements must be in compliance with all such public authority accounting directives issued by the State Comptroller. Such financial statements shall be audited in accordance with government auditing standards issued by the Comptroller General of the United States. A copy of the financial statement auditor's report shall accompany the financial statements submitted pursuant to this Part.

(d) the management letter comments, a report on internal controls over financial reporting, and a copy of any other communications required or allowed by government auditing standards issued by the Comptroller General of the United States to be issued by the public authority's independent auditor in connection with the most recent annual audit of the public authority's financial statements;

(e) an annual report on procurement contracts prepared in accordance with the provisions of section 2879 of the Public Authorities Law which shall include:

(1) A publicly available annual report describing procurement activity as specified in section 2879(6) of the Public Authorities Law. Such report shall include a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption, and the status of existing procurement contracts. Such report shall list for each contract the following information:

(i) a description of the duties performed by the contractor;

(ii) the date of the contract and its duration;

(iii) the total value of the contract;

(iv) the full name and address of the contractor;

(v) the status of the contract including the amount spent or other considerations given pursuant to the contract during the reporting period and for the life of the contract to date;

(vi) whether the contractor is a certified minority or women-owned business enterprise;

(vii) the total number of bids or proposals received prior to the award of the contract; and

(2) a report on procurement contracts containing the information specified in section 2879(7) of the

Public Authorities Law, which shall include the procurement guidelines adopted by the public authority in accordance with the provisions of section 2879 of the Public Authorities Law, an explanation of such guidelines and any amendments thereto since the last annual report;

(f) an investment report prepared in accordance with the provisions of section 2925(6) of the Public Authorities Law;

(g) a copy of the report of the annual independent audit of investments as required by section 2925(3)(f) of the Public Authorities Law. The investment audit report shall contain the following:

(1) a description of the scope and objectives of the audit;

(2) a statement that the audit was made in accordance with generally accepted government auditing standards for financial and compliance audits;

(3) a description of any material weaknesses found in the internal controls;

(4) a description of any noncompliance with the public authority's own investment policies as well as applicable laws, regulations and the State Comptroller's investment guideline requirements set forth in section 201.3 of this Part; and

(5) a statement of positive assurance of compliance on the items tested; and

(6) a statement of any other material deficiency or finding identified during the audit;

(h) the management letter comments and any other communication required by professional audit standards that was issued by the public authority's independent auditor in connection with its most recent annual audit of investments;

(i) completed annual public authority data request questionnaire; and

(j) such supplementary information and other data of a financial and managerial nature as shall be required by the State Comptroller.

§ 201.3 Investment guidelines for public authorities.

(a) Every public authority referred to in section 201.1(b) of this Part shall comply with the investment guideline requirements set forth in subdivision (c) of this section.

(b) Every public authority referred to in section 201.1(b) of this Part shall require its independent auditor to review the public authority's investment policies and practices to determine whether:

(1) the public authority complied with applicable laws, regulations and the State Comptroller's investment guideline requirements set forth in this section;

(2) the public authority complied with its own investment policies;

(3) investment assets were adequately safeguarded;

(4) adequate accounts and records were maintained which accurately reflect all transactions, including a report on the disposition of public authority investment assets; and

(5) a system of adequate internal controls was maintained.

(c) (1) Investment guideline requirements. These investment guideline requirements are intended to guide public authorities in:

(i) establishing a prudent set of basic procedures to meet the individual investment objectives of each public authority;

(ii) assuring that investment assets are adequately safeguarded and collateralized;

(iii) establishing and maintaining a system of internal controls including adequate accounts and records, which accurately reflect in reasonable detail, investment transactions; and

(iv) providing for accurate reporting and evaluation of investment results in conformance with accounting principles generally accepted in the United States of America (GAAP).

(2) (i) All public authorities referred to in section 201.1(b) of this Part are required to comply with these investment guideline requirements. These guideline requirements contain certain fundamental principles and standards for the administration of an investment program. An investment program involving public funds must include four basic ingredients - legality, safety, liquidity and reasonable return. Section 2925 of the Public Authorities Law also requires public authorities to develop investment guidelines that meet certain basic requirements.

(ii) Because of the vast differences in the size and operations of public authorities and in the scope of their investment portfolios, these guideline requirements are intended to represent only minimum standards and be sufficiently broad to apply in most investment situations. It is the responsibility of each public authority to determine and evaluate its own risks in all its investment transactions with due regard to prudent business principles and practices. The governing body and management of a public authority are responsible for making investment decisions for the public authority and for doing so with the judgment, care, skill, prudence and diligence under the circumstances then prevailing that a knowledgeable and prudent investor 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. While individual public authorities are authorized to establish different systems and procedures that meet their specific needs in administering their investment programs, it is expected that all public authorities will meet the minimum standards contained in these guideline requirements. No departure from these guideline requirements may create an exception from a requirement imposed by law and every departure from these guideline requirements must be formally approved by a resolution of the governing body of the public authority, and a copy of such resolution shall be submitted to the Office of Budget and Policy Analysis of the Office of the State Comptroller not less than 30 days after the adoption of such resolution.

(iii) Public authority investments must be made in accordance with legal requirements (A) set forth in the statute which created a particular public authority, the Public Authorities Law or any other applicable law, and (B) prescribed by the State Comptroller, the New York State Public Authorities Control Board or any other officer or entity having the authority to supervise or approve the activities of a public authority. In addition, investments must be adequately protected and deposits of money should be fully collateralized. The financial resources of the public authority should be properly managed to achieve investment income consistent with sound investment practice. The following provisions contain the essential elements that are generally recognized and accepted for the effective management and control of investments.

(3) Investment Policy. (i) Each public authority shall have a written investment policy approved by its governing body. Members of the governing body shall take an active role in the formulation of the investment policy. The investment policy shall be reviewed periodically (at least annually) and revised as necessary to reflect changes in available investment opportunities and market conditions or as a result of any recommendations from the periodic evaluation of the performance of the investment program or any audits of the investment program.

(ii) The governing body may wish to delegate the formulation of the investment policy to an investment committee of the governing body. In addition to formulating the investment policy, functions to be performed by the investment committee shall include, but not be limited to, evaluating the investment program by:

(A) monitoring the system of internal controls;

(B) verifying relevant matters relating to the securities purchased or held as collateral at least semiannually and on an unscheduled basis;

(C) determining that the investment results are consistent with the governing body's objectives; and

(D) reviewing any independent audits of the investment program.

(iii) Investment policies shall include the following:

(A) Investment Objectives and Types of Investment Authorized. The primary investment objective of public entities is protection of principal. The investment policy shall contain a detailed list of the permitted investments which shall be consistent with the appropriate provisions of the law relating to the public authority, provisions of applicable note and bond resolutions and special policy directives of the governing body.

(B) Diversification of Investments. The investment policy shall include standards for the diversification of investments, both with respect to type of investment and firms with which the public authority transacts business. Diversification policies shall also address the term of each investment.

(C) Delegation of Investment Management. All investment transactions shall be reviewed and approved by those officials designated by the governing body. The investment policy shall list persons who are authorized to make investment decisions and shall limit the number of persons who may place orders. In some cases the State laws governing the operations of a public authority may designate an official outside of the public authority, such as the Commissioner of Taxation and Finance, to be the fiscal agent for the public authority and to invest public authority moneys not required for immediate use. Such a delegation does not relieve the public authority from the responsibility of overseeing the investment program, since ultimately the governing body is responsible for the management and safeguarding of all the public authority assets entrusted in its care.

(D) Internal Control and Procedures. The investment policy shall include provisions requiring the investment officer to establish and maintain an internal control structure designed to ensure that the investment assets of the public authority are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived from the control and that the valuation of costs and benefits requirements estimates and judgments by management. Accordingly, the investment officer shall establish a process for an annual independent review by an independent auditor to assure compliance with policies and procedures. The internal controls shall address the following:

- (1) Control of collusion;
- (2) Separation of transaction authority from accounting and recordkeeping;
- (3) Custodial safekeeping;
- (4) Avoidance of physical delivery securities;
- (5) Clear delegation of authority to subordinate staff members;
- (6) Confirmation of transactions for investments and wire transfers; and
- (7) Wire transfer agreements.

(E) Selection of Investment Firms. An approved list of financial institutions shall be established for each type of investment based on applicable law and upon the qualifications of investment bankers, brokers, agents, dealers and other investment advisors and agents which transact business with the public authority. In addition a list shall also be maintained of approved security broker/dealers selected by creditworthiness (e.g., a minimum capital requirement of \$10,000,000 and at least five years of operation). These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply the following as appropriate:

- (1) Audited financial statements.
- (2) Proof of National Association of Securities Dealers (NASD) certification.
- (3) Proof of state registration.
- (4) Completed broker/dealer questionnaire, in the form adopted by the public authority.

(F) Investment Procedures and Contracts. The public authority's investment guidelines shall include procedures for each investment or transaction. Such procedures shall include provisions:

- (1) deemed necessary and sufficient to secure in a satisfactory manner the public authority's financial interest in each investment;
- (2) covering the use, type and amount of collateral or insurance for investments requiring collateralization;
- (3) establishing a method of valuation of collateral, and procedures for monitoring the valuation of such collateral on a regular basis and obtaining additional collateral when necessary to adequately secure collateralized investments; and
- (4) for the monitoring, control, deposit, and retention of investments and collateral which shall include, in the case of a repurchase agreement, a requirement that the obligations purchased be physically delivered for retention to the public authority or its agent (which shall not be an agent of the party with whom the public authority enters into such repurchase agreement), unless such obligations are issued in book-entry form, in which case the public authority shall take such other action as may be necessary to obtain title to or a perfected security interest in such obligations.

The investment guidelines shall include a requirement that the public authority enter into a written contract for each investment, the provisions of which cover the items set forth in items (1) through (4), above. If the public authority shall determine by resolution that a written contract is not practical or that there is not a regular business practice of written contracts with respect to a specific investment or transaction, the procedures prescribed for that type of investment shall nonetheless adhere to items (1) through (4), above.

(G) Collateralization. The investment policy shall include provisions and procedures to fully secure or collateralize the public authority's financial interest in investments requiring security or collateralization, provided that the policy may include a description of the circumstances under which the public authority's financial interest in investments may be less than fully secured or collateralized. The collateral for investments shall be limited to obligations having the same ratings as or higher ratings than the ratings of the obligations permissible for the public authority's direct investments. The collateral shall be segregated in the public authority's name and shall be in the custody of the public authority or a third party custodian. The public authority shall not accept a pledge of a proportionate interest in a pool of collateral. For demand deposits, time deposits and certificates of deposit, collateralization is required for amounts over and above Federal Deposit Insurance Corporation coverage. The market value and the accrued interest of the collateral shall equal the value of the investment and any accrued interest at all times. The recorded value of the collateral backing any investment shall be compared with current market values (mark-to-market) at the time of initial investment, and thereafter at least monthly (or more often if the public authority determines that volatile market conditions require more frequent valuation), to be certain that it continues to be at least equal to the value of the investment plus accrued interest. The mark-to-market reviews shall use "bid" price from one constant source. It may be desirable to require collateralization in excess of the market value at the time of purchase. There shall be a written custodial agreement which, among other things, specifies the circumstances under which collateral may be substituted and provides that the custodian is holding the securities solely for the benefit of the public authority and makes no claim thereto.

(H) Performance Evaluation and Audit. The investment policy shall provide for the systematic and periodic evaluation of investment program compliance. This function may be performed by the governing body itself or assigned to the investment committee or the internal or external auditors. Section 2925 (3)(f) of the Public Authorities Law requires each public authority to have an annual independent audit of all investments.

(I) Reporting. The investment policy shall explicitly require periodic reporting on the investment program including:

(1) Internal Management Reporting. There shall be periodic (at least quarterly) reporting to the governing body on the investment program operations. Such reporting provides an effective tool for evaluating investment program compliance. Section 2925(5) of the Public Authorities Law requires each public authority to have prepared and filed with the governing body quarterly reports or reports covering such other period as may be approved by the governing body. The report or reports, from a designated officer or employee must indicate any new investments, the inventory of existing investments and the selection of investment bankers, brokers, agents, dealers, or auditors.

(2) Financial Statements. The public authority's annual basic financial statements, which are required to be prepared in conformance with accounting principles generally accepted in the United States of America (GAAP), shall contain all note disclosures on deposits with financial institutions and investments required by the Governmental Accounting Standards Board (GASB) for the period covered by the basic financial statements. GASB has issued numerous Statements, Interpretations and Technical Bulletins establishing and clarifying investment reporting and disclosure requirements. Public authorities shall review and apply these standards and guidance as appropriate and in compliance with the requirements of this Part and such public

authority accounting directives as may be issued by the State Comptroller.

(3) Reporting to Oversight Agencies. Section 2925(6) of the Public Authorities Law requires public authorities to submit an annual investment report. Section 2925(7)(a) of the Public Authorities Law requires each public authority, a majority of the members of which consist of persons appointed by the Governor or who serve as members by virtue of holding a civil office of the State, or a combination thereof, to submit the annual investment report to the Division of the Budget with copies to the Office of the State Comptroller, the Senate Finance Committee, and the Assembly Ways and Means Committee. Section 2925(7)(b) of the Public Authorities Law requires each public authority, a majority of the members of which does not consist of persons appointed by the Governor or who serve as members by virtue of holding a civil office of the State, or a combination thereof, to submit the annual investment report to the chief executive officer and chief fiscal officer of each municipality for the benefit of which it was created and to the Office of the State Comptroller. Such report shall include:

(I) the investment guidelines required by Public Authorities Law Section 2925(3) and any amendments to such guidelines since the last investment report;

(II) an explanation of the investment guidelines and amendments;

(III) the results of the annual independent audit;

(IV) the investment income record of the public authority; and

(V) a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and advisor rendering investment associated services to the public authority since the last investment report.

(4) Operating Procedures. Operating procedures for the administration of an investment program shall include the following:

(A) The investment selection process shall utilize competitive quotations or negotiated prices, except in the purchase of federal government securities at auction.

(B) Each disbursement of funds (and corresponding receipt of securities) or delivery of securities (and corresponding receipt of funds) shall be based upon proper written authorization. If the authorization is initially given verbally, there shall be written confirmation from the investment officer to the custodian.

(C) Payment of funds shall only be made upon delivery of securities.

(D) The process of initiating, reviewing and approving requests to buy and sell investments shall be documented and retained for audit purposes.

(E) Custodians must have prior authorization from the public authority to deliver obligations and collateral. Delivery of obligations sold shall only be made upon receipt of funds.

(F) Custodial banks shall be required to report monthly or more frequently on activity occurring in the public authority's custodial account.

(G) There shall be at least monthly verifications of both the principal amount and the market values of all investments and collateral. Appropriate listings shall be obtained from the custodian and compared against

the public authority's records.

(H) A record of investments shall be maintained by the investment officer. The records shall identify the security, the fund for which held, the place where kept, date of disposition and amount realized, if required, and the market value and custodian of collateral.

(5) Procedures for Repurchase Agreements. Great care must be exercised by those public authorities that invest in repurchase agreements. Because repurchase agreements may expose investors to serious risks, the following procedures shall be followed to reduce those risks:

(A) Repurchase agreements shall only be purchased from banks or trust companies authorized to do business in the State of New York or from broker dealers on the Federal Reserve Bank of New York's list of primary government securities dealers.

(B) Repurchase agreements shall be for no more than 90 days. Agreements which are "open" (continuing in nature) shall not be made.

(C) The public authority shall execute a master repurchase agreement with each broker dealer which outlines the basic rights of both buyer and seller including:

(1) The events of default which would permit the purchaser to liquidate the pledged collateral;

(2) The relationship between parties to the agreement, which shall ordinarily be purchaser and seller;

(3) Procedures which ensure that the public authority obtains a perfected security interest in the securities which are the subject of the agreement;

(4) The method of computing margin maintenance requirements and providing for timely correction of margin deficiencies or excesses. Specific guidelines regarding margin maintenance shall be established, taking into consideration:

(I) the type of collateral;

(II) the maturity of the collateral;

(III) the method by which additional margin will be maintained; and

(5) Circumstances, if any, under which substitution of securities subject to the agreement shall be permitted.

(D)The public authority or its custodian must take possession of the securities being purchased by physical delivery or book entry. The custodian shall not be the same party that is selling the securities to the public authority.

(E) A custodial bank shall be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of securities to the credit of the public authority.

(6) Independent Audit Considerations.

(A) Section 2925 (3)(f) of the Public Authorities Law requires each public authority to have an annual

independent audit of all investments. The annual investment audit:

(1) shall determine whether: the public authority complies with its own investment policies; investment assets are adequately safeguarded; adequate accounts and records are maintained which accurately reflect all transactions and report on the disposition of public authority investment assets; and a system of adequate internal controls is maintained;

(2) shall determine whether the public authority complied with the applicable laws, regulations, the State Comptroller's investment guideline requirements set forth in this subdivision, and such public authority accounting directives as may be issued by the State Comptroller; and

(3) shall be designed to the extent practical to satisfy both the common interests of the public authority and the public officials accountable to others.

(B) A written audit report shall be prepared presenting the results of the annual independent audit of all investments and shall include:

(1) a description of the scope and objectives of the audit;

(2) a statement attesting that the audit was conducted in accordance with generally accepted government auditing standards;

(3) a description of any material weaknesses found in the internal controls;

(4) a description of all non-compliance with the public authority's own investment policies as well as applicable laws, regulations, the State Comptroller's investment guideline requirements for Public Authorities set forth in this subdivision, and such public authority accounting directives as may be issued by the State Comptroller;

(5) a statement of positive assurance of compliance on the items tested; and

(6) a statement on any other material deficiency or finding identified during the audit not covered in (5) above.

(C) The audit report shall be filed within 90 days after the close of the public authority's fiscal year with the Office of Budget and Policy Analysis of the Office of the State Comptroller.

(7) Effective Date. These investment guideline requirements for Public Authorities are effective immediately upon the adoption of this subdivision of the State Comptroller's regulations and supersede the Investment Guidelines for Public Authorities issued by the Office of the State Comptroller on January 2, 1998.

§ 201.4 Submission of required documents and reports; waivers.

(a) The documents and reports required by this Part shall be submitted by a public authority in an electronic format prescribed by the Office of Budget and Policy Analysis of the Office of the State Comptroller, within 90 days after the close of the public authority's fiscal year, to an internet address or an e-mail address specified by the Office of Budget and Policy Analysis.

(b) Questions relating to the applicability or interpretation of this Part should be submitted to the Office

of Budget and Policy Analysis.

(c) A public authority may apply for a waiver of any requirement set forth in this Part. A request submitted in an electronic format shall be submitted to an internet address or an e-mail address specified by the Office of Budget and Policy Analysis of the Office of the State Comptroller. A request submitted in a nonelectronic format should be addressed to the Office of Budget and Policy Analysis, Office of the State Comptroller, 110 State Street, Albany, NY 12236-0001. A request for a waiver from a reporting requirement should be submitted not later than the date on which the report is due. No waiver from a requirement established by law shall be granted. A waiver from a requirement established solely by this Part may be granted for reasonable cause unless such a waiver would interfere with the fulfillment of a duty of the State Comptroller. The Office of Budget and Policy Analysis shall transmit a written determination, in electronic format, of a waiver request to the public authority requesting the waiver. A determination approving a waiver shall specify (i) the scope of the waiver, (ii) the reason therefor, and (iii) the new reporting date, if the waiver involves the postponement of a reporting date otherwise required by this Part.