

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No.: 892 Department or Agency: Office of State Treasurer
Rule No. 892-X-1-.07
Rule Title: Custodians
New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Daria Gray*

Date 7.20.11

(DATE FILED)
(STAMP)

Office of State Treasurer
SAFE Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Office of State Treasurer

RULE NO. & TITLE:

892-X-1-.01	<u>Purpose</u>
892-x-1-.03	<u>Designation as a Qualified Public Depository</u>
892-X-1-.04	<u>Collateral Pledging Levels</u>
892-X-1-.05	<u>Maintaining Active Status</u>
892-X-1-.06	<u>Valuation of Collateral</u>
892-X-1-.07	<u>Custodians</u>
892-X-1-.08	<u>Requirements of QPDs</u>
892-X-1-.09	<u>Requirements of Public Depositors</u>
892-X-1-.13	<u>Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties</u>
892-X-1-.14	<u>Administrative Penalties - QPD</u>
892-X-1-.15	<u>Involuntary Withdrawal or Suspension</u>
892-X-1-.16	<u>Voluntary Withdrawal</u>
892-X-1-.18	<u>Reports by the Treasurer</u>
892-X-1-.19	<u>Use of Letters of Credit as Eligible Collateral</u>

INTENDED ACTION:

The Office of State Treasurer, on behalf of the SAFE Board of Directors, proposes to amend certain of the existing Rules for the SAFE Program found in Title 41, Chapter 14A, Code of Alabama 1975, as amended.

To amend Rule No. 892-X-1-.01	<u>Purpose</u>
To amend Rule No. 892-x-1-.03	<u>Designation as a Qualified Public Depository</u>
To amend Rule No. 892-X-1-.04	<u>Collateral Pledging Levels</u>
To amend Rule No. 892-X-1-.05	<u>Maintaining Active Status</u>
To amend Rule No. 892-X-1-.06	<u>Valuation of Collateral</u>
To amend Rule No. 892-X-1-.07	<u>Custodians</u>
To amend Rule No. 892-X-1-.08	<u>Requirements of QPDs</u>
To amend Rule No. 892-X-1-.09	<u>Requirements of Public Depositors</u>

To amend Rule No. 892-X-1-.13 Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties

To amend Rule No. 892-X-1-.14 Administrative Penalties - QPD

To amend Rule No. 892-X-1-.15 Involuntary Withdrawal or Suspension

To amend Rule No. 892-X-1-.16 Voluntary Withdrawal

To amend Rule No. 892-X-1-.18 Reports by the Treasurer

To amend Rule No. 892-X-1-.19 Use of Letters of Credit as Eligible Collateral

SUBSTANCE OF PROPOSED ACTION:

To amend Rule No. 892-X-1-.01 Purpose to remove a reference to the Appendix that was repealed effective September 24, 2008.

To amend Rule No. 892-x-1-.03 Designation as a Qualified Public Depository to remove a reference to the Appendix that was repealed effective September 24, 2008.

To amend Rule No. 892-X-1-.04 Collateral Pledging Levels to clarify evaluations may be proprietary.

To amend Rule No. 892-X-1-.05 Maintaining Active Status to remove listing of required forms.

To amend Rule No. 892-X-1-.06 Valuation of Collateral to clarify Rule title, and to require QPD's to provide annual certification of non-rated obligations.

To amend Rule No. 892-X-1-.07 Custodians to include trust company criteria, require listing of securities ratings, delete redundant information, and condense violation and fine procedures.

To amend Rule No. 892-X-1-.08 Requirements of QPDs to clarify reporting requirements and to notify Treasurer of any confidential information.

To amend Rule No. 892-X-1-.09 Requirements of Public Depositors to shorten timeframe to submit claim form from 120 days to 90 days.

To amend Rule No. 892-X-1-.13 Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties to clarify timeframe to pledge collateral and to receive Treasurer approval for decrease in LOC only.

To amend Rule No. 892-X-1-.14 Administrative Penalties - QPD to delete redundant information and to condense violation and fine procedures.

To amend Rule No. 892-X-1-.15 Involuntary Withdrawal or Suspension to provide that the withdrawing QPD will be listed on the website.

To amend Rule No. 892-X-1-.16 Voluntary Withdrawal to clarify withdrawal procedures.

To amend Rule No. 892-X-1-.18 Reports by the Treasurer to rename Rule title for clarification and to clarify confidential information.

To amend Rule No. 892-X-1-.19 Use of Letters of Credit as Eligible Collateral to clarify use of LOC, to condense requirements, and to remove requirement of a LOC Agreement.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Interested persons may submit oral or written comments by personal appearance, mail, facsimile or electronic mail received not later than 5:00 PM on Tuesday, September 6, 2011 to:

Office of State Treasurer, State Capitol Building S-106, 600 Dexter Avenue, Montgomery, AL 36104; telephone 334-242-7501; facsimile 334-353-4080; or email daria.story@treasury.alabama.gov.

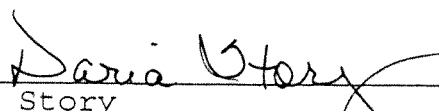
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

A hearing on this proposal and comments received thereto will be held on Tuesday, September 6, 2011 at 2:00 PM, CST, at the following place:

Office of State Treasurer, State Capitol Building, Room S-106, 600 Dexter Avenue, Montgomery, AL 36104.

CONTACT PERSON AT AGENCY:

Daria Story, Assistant State Treasurer, 334-242-7506, daria.story@treasury.alabama.gov



Daria Story
Assistant State Treasurer

892-X-1-. 07 Custodians.

(1) Each custodian designated by a QPD pursuant to a Collateral Agreement ("Custodian") shall be a bank, savings association or trust company that:

(a) Is organized and existing under the laws of the State of Alabama, any other state of the United States, or the United States.

(b) Has executed a Collateral Agreement in the format prescribed by the SAFE Board, and detailed in the Appendix.

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising.

(d) Has been approved by the Treasurer to act as a custodian.

(e) Upon request from the Treasurer, provides a confirmation of securities pledged to the Treasurer by each QPD in the format prescribed by the Treasurer that includes the following information:

(1) ~~Full name and location of QPD;~~

2. (2) ~~Full description of securities pledged to the Treasurer;~~

(3) ~~The signature, printed name, title, address, and telephone number of the person authorized on behalf of the custodian to prepare and validate the confirmation.~~

(f) Agrees to provide financial information to the Treasurer upon request.

(g) Quarterly, provides a listing of ratings per security by each QPD unless advised by Treasurer that no listing is required.

(h) Provides immediate notification to SAFE when any pledged mortgage backed security, CMO, or similar security is paid off.

(i) If a trust company, agrees to the following:

1. Provide a notice of good standing from its charter authority;

2. Hold and maintain \$1 million in tangible capital;

3. Submit regulatory financial reports on a quarterly basis;

4. Submit its annual SAS 70 audit, and the results be acceptable to SAFE;

5. Notify Treasurer of any and all public enforcement actions immediately.

(2) Financial institutions which exercise trust powers may hold collateral (other than Letters of Credit and the proceeds from any draws on any Letters of Credit) as security for deposits situated in that financial institution through its trust division.

(3) The Treasurer ~~may~~ shall, from time to time, designate one or more custodians a Treasurer-Designated Custodian to perform such functions as the Treasurer shall determine are appropriate and desirable in connection with the administration of the SAFE Program, ~~including without limitation to receive and hold, subject to the Treasurer's instructions, proceeds from any draw on a Letter of Credit that are not paid directly to the Treasurer and deposited to the Loss Payment Fund.~~ Each Treasurer-Designated Custodian shall be a bank, savings association or trust company that meets the requirements of a Custodian:

~~(a) Is organized and existing under the laws of the State of Alabama, any other state of the United States, or the United States.~~

~~(b) Has executed a Custody Agreement in the format prescribed by the Treasurer.~~

~~(c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising.~~

~~(d) Has been approved by the Treasurer to act as a custodian.~~

~~(e) Upon request from the Treasurer, provides a confirmation of funds and securities held by the Treasurer Designated Custodian pursuant to any Custody Agreements, together with the signature, printed name, title, address and telephone number of the person authorized on behalf of the custodian to prepare and validate the confirmation.~~

~~(f) Agrees to provide financial information to the Treasurer upon request.~~

(4) A Custodian may be assessed an administrative penalty or disqualified if it does one or more of the following:

(a) Fails to execute a Collateral Agreement

(b) Releases pledged collateral without the Treasurer's approval.

(c) Fails to provide complete confirmations of pledged collateral within 7 business days.

(d) Fails to honor a request for reports, or an examination of funds or securities.

(e) Fails to pay an administrative penalty.

(5) The following administrative penalties may be enforced upon a Custodian in lieu of suspension or involuntary withdrawal:

(a) ~~A Notice of SAFE Violation shall be generated by SAFE~~

~~(1):~~ The written Notice of SAFE Violation will be issued upon the first occurrence of any action listed in (43) above, ~~and in the following form:~~

~~(i) Issued within 5 banking days of detection of the violation;~~

~~(ii) In written form, providing details of the violation;~~

~~(iii) Providing that fines will be incurred if the violation is not corrected, or if it is repeated within one year of the Custodian's written response;~~

~~(iv) Requiring a written response from the Custodian within 10 banking days of the date of Notice;~~

~~(v) Delivered by fax notice to Custodian with the original mailed.~~

~~(2):~~ The Custodian shall prepare a written Response to Notice of SAFE Violation that will:

~~(i) Provides a corrective action plan with a timeframe for completion within 30 calendar days; or~~

~~(ii) Provides a statement with substantiating documentation that the infraction has not occurred.~~

~~(iii) Delivered by fax notice to SAFE with original to be mailed.~~

~~(3) Written confirmation of receipt will be provided to the Custodian by SAFE.~~

(b) Notice of SAFE Fine

(1) A written Notice of SAFE Fine shall be issued under the following conditions:

(i) The Recurrence of a previous infraction cited by a Notice of SAFE Violation;

(ii) No response is received from the Custodian to either the Notice of SAFE Violation or the Notice of SAFE Fine;

- (iii) The Custodian refuses to correct a violation;
- (iv) The violation significantly harms the SAFE Program.

~~(2) The Notice of SAFE Fine shall be generated as follows:~~

~~(i) Issued within 5 banking days of the detection of one of the conditions stated in (1) above;~~

~~(ii) In written form, providing details of the violation;~~

~~(iii) Providing the amount of the fine to be incurred by the Custodian;~~

~~(iv) Requiring a written response from the Custodian within 10 banking days of the date of the Notice;~~

~~(v) Delivered by fax notice to the Custodian with the original to be mailed;~~

~~(23) The Custodian shall prepare a written response to the Notice of SAFE Fine that pwill:~~

~~(i) Pprovides a corrective action plan with a timeframe for completion within 30 calendar days; and~~

~~(ii) iIncludes payment of fine by check; or~~

~~(iii) pProvides a statement with substantiating documentation that the infraction has not occurred;~~

~~(iv) Delivered by fax notice to SAFE with the original to be mailed.~~

~~(4) Written confirmation of receipt will be provided to the Custodian by SAFE.~~

(c) Fines to be imposed against a Custodian will be as follows:

(1) The first Recurrence of a violation shall result in a \$2,500 fine;

(2) The second Recurrence of a violation or a violation that causes significant harm to the SAFE Program shall be referred to the SAFE Board for review and assessment of penalty or disqualification as allowed by SAFE Law.

Author: Daria Story, SAFE Division, Office of State Treasurer

Statutory Authority: Sections 41-14A-2, 41-14A-5, 41-14A-6 and 41-14A-7, Code of Alabama 1975, as amended.

History: **New Rule:** Filed March 28, 2001; effective May 2, 2001.

Amended (only rule number changed) : Filed September 19, 2002; effective October 24, 2002. **Amended:** Filed January 23, 2004; effective February 27, 2004.

Amended: Filed December 20, 2004; effective January 24, 2005. **Amended:** Filed August 20, 2008; effective September 24, 2008.

| **Amended:** Filed July 20, 2011