

September 25, 2018

BUREAU POSITION ON USE OF CLIENT USERNAMES AND/OR PASSWORDS

To Whom It May Concern:

The Pennsylvania Department of Banking and Securities (“Department”), Bureau of Securities Compliance and Examinations (“Bureau”), has received inquiries concerning what action, if any, the Bureau would take if a Pennsylvania registered investment advisor or investment advisor representative (collectively known as “Registrant”) are using client usernames and/or passwords to access client custodial accounts. The Bureau has two concerns that arise from the Registrant’s use of client usernames and/or passwords: 1) Custody, and 2) Dishonest and Unethical Practices.

Custody

Custodial account usernames and passwords often allow the user to change client personal information (such as residential addresses, email addresses and phone numbers), or to transfer funds and/or securities out of an account. Registrants using client usernames and/or passwords with these capabilities may meet the definition of custody. An Investment Advisor with custody must be in compliance with all custody rules as outlined in the Pennsylvania Securities Act of 1972 and Regulations promulgated by the Department. For Pennsylvania registered investment advisors, this generally requires, notification to the Department, a net worth of \$35,000, an annual audited balance sheet filed with the Department, completion of an internal control report that includes an opinion of an independent certified public accountant and an annual surprise examination of client funds or securities by an independent certified public accountant.

Dishonest and Unethical Practices

Registrants are fiduciaries and shall act primarily for the benefit of their customers. Registrants shall observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business. The use of client usernames and/or passwords by Registrants may cause clients to violate their own custodial user agreements, or it can void the custodian’s policies that may reimburse clients for unauthorized withdrawals. At a minimum, Registrants engaged in these practices are misrepresenting themselves as their client to the custodian.

Bureau Position

The Bureau considers Registrants using client usernames and/or passwords to access client custodial accounts as a dishonest and unethical practice. The Bureau will recommend administrative action in these circumstances, unless remedial action is taken as outlined below.

Remedial Action

Unless additional circumstances exist, the Bureau will not recommend administrative action for custody violations or dishonest and unethical practices if the Registrant immediately ceases the use of client usernames and/or passwords to access client custodial accounts. In addition, the Registrant must notify affected clients to change their custodial account username and/or password and security questions. This client notification must be made within 30 days of the date of this letter, and it must be made by means of written communication. The Bureau does not require Registrants to report the use of client usernames and/or passwords to the Department if these remedial steps are taken. Please keep in mind that client communications must be kept in accordance to our record retention requirements. As always, the Bureau reserves the right to change the treatment of these circumstances and its opinion on recommending administrative action.

On Behalf of the Commonwealth
Department of Banking and Securities,

A handwritten signature in black ink, appearing to read "Glenn R. Skreppen", with a long horizontal flourish extending to the right.

Glenn R. Skreppen, Bureau Director
Bureau of Securities Compliance and Examinations