Retirement Income Security Act of 1974 (29 U.S.C. 1108).

(c) *Loans to fiduciary accounts.* A national bank may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A national bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A national bank may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

§ 9.13 Custody of fiduciary assets.

(a) *Control of fiduciary assets.* A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A national bank shall keep the assets of fiduciary accounts separate from the assets of the bank. A national bank shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in § 9.18.

§ 9.14 Deposit of securities with state authorities.

(a) *In general.* If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank of the district in which the national bank is located, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

(b) *Assets held in more than one state.* If a national bank administers trust assets in more than one state, the bank may compute the amount of deposit required for each state on the basis of trust assets that the bank administers primarily from offices located in that state.

§ 9.15 Fiduciary compensation.

(a) *Compensation of bank.* If the amount of a national bank's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the bank may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A national bank may not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of the bank's board of directors.

§ 9.16 Receivership or voluntary liquidation of bank.

If the OCC appoints a receiver for an uninsured national bank, or if a national bank places itself in voluntary liquidation, the receiver or liquidating agent shall promptly close or transfer to a substitute fiduciary all fiduciary accounts, in accordance with OCC instructions and the orders of the court having jurisdiction.

§ 9.17 Surrender or revocation of fiduciary powers.

(a) *Surrender.* In accordance with 12 U.S.C. 92a(j), a national bank seeking to surrender its fiduciary powers shall file with the OCC a certified copy of the resolution of its board of directors evidencing that intent. If, after appropriate investigation, the OCC is satisfied that the bank has been discharged from all fiduciary duties, the OCC will provide written notice that the bank is no longer authorized to exercise fiduciary powers.

(b) *Revocation.* If the OCC determines that a national bank has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise its fiduciary powers, the Comptroller may, in accordance with the

provisions of 12 U.S.C. 92a(k), revoke the bank's fiduciary powers.

§9.18 Collective investment funds.

(a) *In general.* Where consistent with applicable law, a national bank may invest assets that it holds as fiduciary in the following collective investment funds:[1]

(1) A fund maintained by the bank, or by one or more affiliated banks,[2] exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliated banks, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act.

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from Federal income tax.

(i) A national bank may invest assets of retirement, pension, profit sharing, stock bonus, or other trusts exempt from Federal income tax and that the bank holds in its capacity as trustee in a collective investment fund established under paragraph (a)(1) or (a)(2) of this section.

(ii) A national bank may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts exempt from Federal income tax and that the bank holds in any capacity (including agent), in a collective investment fund established under this paragraph (a)(2) if the fund itself qualifies for exemption from Federal income tax.

(b) *Requirements.* A national bank administering a collective investment fund authorized under paragraph (a) of this section shall comply with the following requirements:

(1) *Written plan.* The bank shall establish and maintain each collective investment fund in accordance with a written plan (Plan) approved by a resolution of the bank's board of directors or by a committee authorized by the board. The bank shall make a copy of the Plan available for public inspection at its main office during all banking hours, and shall provide a copy of the Plan to any person who requests it. The Plan must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the bank will operate the fund, including provisions relating to:

(i) Investment powers and policies with respect to the fund;

(ii) Allocation of income, profits, and losses;

(iii) Fees and expenses that will be charged to the fund and to participating accounts;

(iv) Terms and conditions governing the admission and withdrawal of participating accounts;

(v) Audits of participating accounts;

(vi) Basis and method of valuing assets in the fund;

(vii) Expected frequency for income distribution to participating accounts;

(viii) Minimum frequency for valuation of fund assets;

(ix) Amount of time following a valuation date during which the valuation must be made;

(x) Bases upon which the bank may terminate the fund; and

(xi) Any other matters necessary to define clearly the rights of participating accounts.

(2) *Fund management.* A bank administering a collective investment fund shall have exclusive management thereof, except as a prudent person might delegate responsibilities to others.[3]

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[1] In determining whether investing fiduciary assets in a collective investment fund is proper, the bank may consider the fund as a whole and, for example, shall not be prohibited from making that investment because any particular asset is nonincome producing.

[2] A fund established pursuant to this paragraph (a)(1) that includes money contributed by entities that are affiliates under 12 U.S.C. 221a(b), but are not members of the same affiliated group, as defined at 26 U.S.C. 1504, may fail to qualify for tax-exempt status under the Internal Revenue Code. *See* 26 U.S.C. 584.

[3] If a fund, the assets of which consist solely of Individual Retirement Accounts, Keogh Accounts, or other employee benefit accounts that are exempt from taxation, is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the fund will not be deemed in violation of this paragraph (b)(2) as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)).