

§ 8.8

(2) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published the preceding March for the second quarter of that year.

(3) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published the preceding June for the third quarter of that year.

(4) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published the preceding September for the fourth quarter of that year.

[48 FR 30599, July 1, 1983. Redesignated and amended at 49 FR 50605, Dec. 31, 1984]

§ 8.8 Notice of Comptroller of the Currency fees.

(a) *December notice of fees.* A "Notice of Comptroller of the Currency Fees" shall be published no later than the first business day in December of each year for fees to be charged by the Office during the upcoming year. These fees will be effective January 1 of that upcoming year.

(b) *Interim notice of comptroller of the Currency fees.* The Office may issue an "Interim Notice of Comptroller of the Currency Fees" or issue an amended "Notice of Comptroller of the Currency Fees" from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

[55 FR 49842, Nov. 30, 1990]

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

REGULATIONS

Sec.

- 9.1 Authority, purpose, and scope.
- 9.2 Definitions.
- 9.3 Approval requirements.
- 9.4 Administration of fiduciary powers.
- 9.5 Policies and procedures.
- 9.6 Review of fiduciary accounts.
- 9.8 Recordkeeping.
- 9.9 Audit of fiduciary activities.
- 9.10 Fiduciary funds awaiting investment or distribution.
- 9.11 Investment of fiduciary funds.
- 9.12 Self-dealing and conflicts of interest.
- 9.13 Custody of fiduciary assets.
- 9.14 Deposit of securities with state authorities.
- 9.15 Fiduciary compensation.

12 CFR Ch. I (1–1–98 Edition)

- 9.16 Receivership or voluntary liquidation of bank.
- 9.17 Surrender or revocation of fiduciary powers.
- 9.18 Collective investment funds.
- 9.20 Transfer agents.

INTERPRETATIONS

- 9.100 Acting as indenture trustee and creditor.

AUTHORITY: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

SOURCE: 61 FR 68554, Dec. 30, 1996, unless otherwise noted.

REGULATIONS

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q–1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply to the fiduciary activities of national banks.

(c) *Scope.* This part applies to all national banks that act in a fiduciary capacity, as defined in § 9.2(e). This part also applies to all Federal branches of foreign banks to the same extent as it applies to national banks.

§ 9.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Affiliate* has the same meaning as in 12 U.S.C. 221a(b).

(b) *Applicable law* means the law of a state or other jurisdiction governing a national bank's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

(c) *Custodian under a uniform gifts to minors act* means a fiduciary relationship established pursuant to a state law substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

(d) *Fiduciary account* means an account administered by a national bank acting in a fiduciary capacity.

(e) *Fiduciary capacity* means: trustee, executor, administrator, registrar of stocks and bonds, transfer agent,

guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

(f) *Fiduciary officers and employees* means all officers and employees of a national bank to whom the board of directors or its designee has assigned functions involving the exercise of the bank's fiduciary powers.

(g) *Fiduciary powers* means the authority the OCC permits a national bank to exercise pursuant to 12 U.S.C. 92a. The extent of fiduciary powers is the same for out-of-state national banks as for in-state national banks, and that extent depends upon what powers the state grants to the fiduciaries in the state with which national banks compete.

(h) *Guardian* means the guardian or conservator, by whatever name used by state law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(i) *Investment discretion* means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account. A bank that delegates its authority over investments and a bank that receives delegated authority over investments are both deemed to have investment discretion.

§9.3 Approval requirements.

(a) A national bank may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

(b) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

§9.4 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A national bank's fiduciary ac-

tivities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

(b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank or its affiliates to perform services related to the exercise of its fiduciary powers, and any department of the bank or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* Pursuant to a written agreement, a national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity.

(d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.

§9.5 Policies and procedures.

A national bank exercising fiduciary powers shall adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the bank's:

- (a) Brokerage placement practices;
- (b) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;
- (c) Methods for preventing self-dealing and conflicts of interest;
- (d) Selection and retention of legal counsel who is readily available to advise the bank and its fiduciary officers and employees on fiduciary matters; and
- (e) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.