

such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

SOURCE: 76 FR 49003, Aug. 9, 2011, unless otherwise noted.

§ 150.10 What regulations govern the fiduciary operations of Federal savings associations?

A Federal savings association (“you”) must conduct its fiduciary operations in accordance with 12 U.S.C. 1464(n) and this part.

§ 150.20 What are fiduciary powers?

Fiduciary powers are the authority that the OCC permits you to exercise under 12 U.S.C. 1464(n).

§ 150.30 What fiduciary capacities does this part cover?

You are subject to this part if you act in a fiduciary capacity, except as described in subpart E of this part. You act in a fiduciary capacity when you act in any of the following capacities:

- (a) Trustee.
- (b) Executor.
- (c) Administrator.
- (d) Registrar of stocks and bonds.
- (e) Transfer agent.
- (f) Assignee.
- (g) Receiver.
- (h) Guardian or conservator 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) A fiduciary in a relationship established under a state law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

(j) Investment adviser, if you receive a fee for your investment advice.

(k) Any capacity in which you have investment discretion on behalf of another.

(l) Any other similar capacity that the OCC may authorize under 12 U.S.C. 1464(n).

§ 150.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

§ 150.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

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§ 150.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a state or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned the functions involving the exercise of the association’s fiduciary powers.

Subpart A—Obtaining Fiduciary Powers

§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?

Except for fiduciary activities subject solely to subpart E, you should refer to 12 CFR 5.26 to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. A Federal savings as-

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sociation may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

[80 FR 28480, May 18, 2015]

Subpart B—Exercising Fiduciary Powers

§ 150.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one state.* You may conduct fiduciary activities in any state, subject to the application and notice requirements in § 5.26 of this chapter.

(b) *Serving customers in more than one state.* When you conduct fiduciary activities in a state:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any state, may act as a fiduciary for relationships that include property located in other states, and may act as a testamentary trustee for a testator located in other states.

(2) You may establish or utilize an office in any state to perform activities that are ancillary to your fiduciary business.

[76 FR 49003, Aug. 9, 2011, as amended at 80 FR 28480, May 18, 2015]

§ 150.135 How do I determine which state’s laws apply to my operations?

(a) The state laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the states in which you conduct fiduciary activities. For each individual state, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the state permits for its state banks, trust companies, or other corporations that compete with Federal savings associations in the state.

(b) For each fiduciary relationship, the state referred to in 12 U.S.C. 1464(n) is the state in which you conduct fiduciary activities for that relationship.

§ 150.136 To what extent do state laws apply to my fiduciary operations?

(a) *Application of state law.* To enhance safety and soundness and to enable Federal savings associations to

conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), the OCC intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to state laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (state laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, "state law" includes any state statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of state laws that are preempted by the HOLA and this section include those regarding:

- (1) Registration and licensing;
- (2) Recordkeeping;
- (3) Advertising and marketing;
- (4) The ability of a Federal savings association conducting fiduciary activities to maintain an action or proceeding in state court; and
- (5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

- (1) Contract and commercial law;
- (2) Real property law;
- (3) Tort law;
- (4) Criminal law;
- (5) Probate law; and
- (6) Any other law that the OCC, upon review, finds:
 - (i) Furthers a vital state interest; and
 - (ii) Either has only an incidental effect on fiduciary operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

§ 150.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?

You must adopt and follow written policies and procedures adequate to maintain your fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the following areas:

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

FIDUCIARY PERSONNEL AND FACILITIES

§ 150.150 Who is responsible for the exercise of fiduciary powers?

The exercise of your fiduciary powers must be managed by or under the direction of your 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 of directors, officers, or employees.

§ 150.160 What personnel and facilities may I use to perform fiduciary services?

You may use your qualified personnel and facilities or an affiliate's qualified personnel and facilities to perform services related to the exercise of fiduciary powers.

§ 150.170 May my other departments or affiliates use fiduciary personnel and facilities to perform other services?

Your other departments or affiliates may use fiduciary officers, employees,

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and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

§ 150.180 May I perform fiduciary services for, or purchase fiduciary services from, another association or entity?

You may perform services related to the exercise of fiduciary powers for another association or other entity under a written agreement. You may also purchase services related to the exercise of fiduciary powers from another association or other entity under a written agreement.

§ 150.190 Must fiduciary officers and employees be bonded?

You must obtain an adequate bond for all fiduciary officers and employees.

REVIEW OF A FIDUCIARY ACCOUNT

§ 150.200 Must I review a prospective account before I accept it?

Before accepting a prospective fiduciary account, you must review it to determine whether you can properly administer the account.

§ 150.210 Must I conduct another review of an account after I accept it?

After you accept a fiduciary account for which you have investment discretion, you must conduct a prompt review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

§ 150.220 Are any other account reviews required?

At least once every calendar year, you must conduct a review of all assets of each fiduciary account for which you have investment discretion. In this review, you must evaluate whether the assets are appropriate, individually and collectively, for the account.

CUSTODY AND CONTROL OF ASSETS

§ 150.230 Who must maintain custody or control of assets in a fiduciary account?

You must place assets of fiduciary accounts in the joint custody or con-

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trol of not fewer than two fiduciary officers or employees designated for that purpose by the board of directors.

§ 150.240 May I hold investments of a fiduciary account off-premises?

You may hold the investments of a fiduciary account off-premises, if this practice is consistent with applicable law, and you maintain adequate safeguards and controls.

§ 150.245 When is a fiduciary not required to maintain custody or control of fiduciary assets?

If you are deemed a fiduciary based solely on your capacity as investment advisor, as that capacity is defined in § 9.101(a) of this chapter, and have no other fiduciary capacity as enumerated in § 150.30, you are not required to maintain custody or control of fiduciary assets as set forth in § 150.220 or § 150.240.

[82 FR 8109, Jan. 23, 2017]

§ 150.250 Must I keep fiduciary assets separate from other assets?

You must keep the assets of fiduciary accounts separate from your other assets. You must also keep the assets of each fiduciary account separate from all other accounts, or you must identify the investments as the property of a particular account, except as provided in § 150.260.

INVESTING FUNDS OF A FIDUCIARY ACCOUNT

§ 150.260 How may I invest funds of a fiduciary account?

(a) *General.* You must invest funds of a fiduciary account in a manner consistent with applicable law.

(b) *Collective investment funds.* (1) You may invest funds of a fiduciary account in a collective investment fund, including a collective investment fund that you have established. In establishing and administering such funds, you must comply with 12 CFR 9.18.

(2) If you must file a document with the OCC under 12 CFR 9.18, the OCC may review such documents for compliance with this part and other laws and regulations.

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(3) "Bank" and "national bank" as used in 12 CFR 9.18 shall be deemed to include a Federal savings association.

FUNDS AWAITING INVESTMENT OR DISTRIBUTION

§ 150.290 What must I do with fiduciary funds awaiting investment or distribution?

If you have investment discretion or discretion over distributions for a fiduciary account which contains funds awaiting investment or distribution, you must ensure that those funds do not remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. You also must obtain a rate of return for those funds that is consistent with applicable law.

§ 150.300 Where may I deposit fiduciary funds awaiting investment or distribution?

(a) Self deposits. You may deposit funds of a fiduciary account that are awaiting investment or distribution in your other departments, unless prohibited by applicable law.

(b) Affiliate deposits. You may also deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law.

§ 150.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit, you must set aside collateral as security. If the FDIC does not insure the entire amount of an affiliate deposit, you or your affiliate must set aside collateral as security. The market value of the collateral must at all times equal or exceed the amount of the uninsured fiduciary funds. You must place the collateral under the control of appropriate fiduciary officers and employees.

§ 150.320 What is acceptable collateral for uninsured deposits?

Any of the following is acceptable collateral for self deposits or affiliate deposits under § 150.310:

(a) Direct obligations of the United States, or other obligations fully guar-

anteed by the United States as to principal and interest.

(b) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are permitted to invest fiduciary funds under applicable state law.

(c) Other readily marketable securities as the OCC may determine.

(d) Surety bonds, to the extent they provide adequate security, unless prohibited by applicable law.

(e) Any other assets that qualify under applicable state law as appropriate security for deposits of fiduciary funds.

RESTRICTIONS ON SELF DEALING

§ 150.330 Are there investments in which I may not invest funds of a fiduciary account?

You may not invest funds of a fiduciary account for which you have investment discretion in the following assets, unless authorized by applicable law:

(a) The stock or obligations of, or assets acquired from, you or any of your directors, officers, or employees.

(b) The stock or obligations of, or assets acquired from, your affiliates or any of their directors, officers, or employees.

(c) The stock or obligations of, or assets acquired from, other individuals or organizations if you have an interest in the individual or organization that might affect the exercise of your best judgment.

§ 150.340 May I exercise rights to purchase additional stock or fractional shares of my stock or obligations or the stock or obligations of my affiliates?

If the retention of investments in your stock or obligations or the stock or obligations of an affiliate in fiduciary accounts is consistent with applicable law, you may do either of the following:

(a) Exercise rights to purchase additional stock (or securities convertible into additional stock) when these rights are offered pro rata to stockholders.

(b) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or

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through the receipt of a stock dividend resulting in fractional share holdings.

§ 150.350 May I lend, sell, or transfer assets of a fiduciary account if I have an interest in the transaction?

(a) *General restriction.* Except as provided in paragraph (b) of this section, you may not lend, sell, or otherwise transfer assets of a fiduciary account for which you have investment discretion to yourself or any of your directors, officers, or employees; to your affiliates or any of their directors, officers, or employees; or to other individuals or organizations with whom you have an interest that might affect the exercise of your best judgment.

(b) *Exceptions—(1) Funds for which you have investment discretion.* You may lend, sell or otherwise transfer assets of a fiduciary account for which you have investment discretion to yourself or any of your directors, officers, or employees; to your affiliates or any of their directors, officers, or employees; or to other individuals or organizations with whom you have an interest that might affect the exercise of your best judgment, if you meet one of the following conditions:

(i) The transaction is authorized by applicable law.

(ii) Legal counsel advises you in writing that you have incurred, in your fiduciary capacity, a contingent or potential liability. Upon the sale or transfer of assets, you must reimburse the fiduciary account in cash in an amount equal to the greater of book or market value of the assets.

(iii) The transaction is permitted under 12 CFR 9.18(b)(8)(iii) for defaulted fixed-income investments.

(iv) The OCC requires you to do so.

(2) *Funds held as trustee.* You may make loans of funds held in trust to any of your directors, officers, or employees if the funds are held in an employee benefit plan and the loan is made in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

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§ 150.360 May I make a loan to a fiduciary account that is secured by an interest in the assets of the account?

You may make a loan to a fiduciary account that is secured by an interest in the assets of the account, if the transaction is fair to the account and is not prohibited by applicable law.

§ 150.370 May I sell assets or lend money between fiduciary accounts?

You may sell assets or lend money between fiduciary accounts, if the transaction is fair to both accounts and is not prohibited by applicable law.

COMPENSATION, GIFTS, AND BEQUESTS

§ 150.380 May I earn compensation for acting in a fiduciary capacity?

If the amount of your compensation for acting in a fiduciary capacity is not set or governed by applicable law, you may charge a reasonable fee for your services.

§ 150.390 May my officer or employee retain compensation for acting as a co-fiduciary?

You may not permit your officers or employees to retain any compensation for acting as a co-fiduciary with you in the administration of a fiduciary account, except with the specific approval of your board of directors.

§ 150.400 May my fiduciary officer or employee accept a gift or bequest?

You may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by your board of directors.

RECORDKEEPING REQUIREMENTS

§ 150.410 What records must I keep?

You must keep adequate records for all fiduciary accounts. For example, you must keep documents on the establishment and termination of each fiduciary account.

§ 150.420 How long must I keep these records?

You must keep fiduciary records for three years after the termination of

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the account or the termination of any litigation relating to the account, whichever is later.

§ 150.430 Must I keep fiduciary records separate and distinct from other records?

You must keep fiduciary records separate and distinct from your other records.

AUDIT REQUIREMENTS

§ 150.440 When do I have to audit my fiduciary activities?

(a) *Annual audit.* If you do not use a continuous audit system described in paragraph (b) of this section, then you must arrange for a suitable audit of all significant fiduciary activities at least once during each calendar year.

(b) *Continuous audit.* Instead of an annual audit, you may adopt a continuous audit system. Under a continuous audit system, you must arrange for a discrete audit of each significant fiduciary activity (*i.e.*, on an activity-by-activity basis) at an interval commensurate with the nature and risk of that activity. Some fiduciary activities may receive audits at intervals greater or less than one year, as appropriate.

§ 150.450 What standards govern the conduct of the audit?

Auditors must follow generally accepted standards for attestation engagements and other standards established by the OCC. An audit must ascertain whether your internal control policies and procedures provide reasonable assurance of three things:

(a) You are administering fiduciary activities in accordance with applicable law.

(b) You are properly safeguarding fiduciary assets.

(c) You are accurately recording transactions in appropriate accounts in a timely manner.

§ 150.460 Who may conduct an audit?

Internal auditors, external auditors, or other qualified persons who are responsible only to the board of directors, may conduct an audit.

§ 150.470 Who directs the conduct of the audit?

Your fiduciary audit committee directs the conduct of the audit. Your fiduciary audit committee may consist of a committee of your directors or an audit committee of an affiliate. There are two restrictions on who may serve on the committee:

(a) Your officers and officers of an affiliate who participate significantly in administering your fiduciary activities may not serve on the audit committee.

(b) A majority of the members of the audit committee may not serve on any committee to which the board of directors has delegated power to manage and control your fiduciary activities.

§ 150.480 How do I report the results of the audit?

(a) *Annual audit.* If you conduct an annual audit, you must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* If you adopt a continuous audit system, you must note the results of all discrete audits conducted since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

Subpart C—Depositing Securities With State Authorities

§ 150.490 When must I deposit securities with state authorities?

You must deposit securities with a state's authorities or, if applicable, a Federal Home Loan Bank under § 150.510, if you meet all of the following:

(a) You are located in the state.

(b) You act as a private or court-appointed trustee.

(c) The law of the state requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts.

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§ 150.500 How much must I deposit if I administer fiduciary assets in more than one state?

If you administer fiduciary assets in more than one state, you must compute the amount of deposit required for each state on the basis of fiduciary assets that you administer primarily from offices located in that state.

§ 150.510 What must I do if state authorities refuse my deposit?

If state authorities refuse to accept your deposit under § 150.490, you must deposit the securities with the Federal Home Loan Bank of which you are a member. The Federal Home Loan Bank will hold the securities for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

Subpart D—Terminating Fiduciary Activities Receivership or Liquidation

§ 150.520 What happens if I am placed in receivership or voluntary liquidation?

If the OCC appoints a conservator or receiver, or if you place yourself in voluntary liquidation, the receiver, conservator, or liquidating agent must promptly close or transfer all fiduciary accounts to a substitute fiduciary, in accordance with OCC instructions and the orders of the court having jurisdiction.

SURRENDER OF FIDUCIARY POWERS

§ 150.530 How do I surrender fiduciary powers?

If you want to surrender your fiduciary powers, you must file a certified copy of a resolution of your board of directors evidencing that intent. You must file the resolution with the appropriate OCC licensing office.

§ 150.540 When will the OCC terminate my fiduciary powers?

If, after appropriate investigation, the OCC is satisfied that you have been discharged from all fiduciary duties, the appropriate OCC licensing office will issue a written notice indicating that you are no longer authorized to exercise fiduciary powers.

§ 150.550 May I recover my deposit from state authorities?

Upon issuance of the OCC written notice under § 150.540, you may recover any securities deposited with state authorities, or a Federal Home Loan Bank, under subpart C of this part.

REVOCATION OF FIDUCIARY POWERS

§ 150.560 When may the OCC revoke my fiduciary powers?

The OCC may revoke your fiduciary powers if it determines that you have done any of the following:

- (a) Exercised those fiduciary powers unlawfully or unsoundly.
- (b) Failed to exercise those fiduciary powers for five consecutive years.
- (c) Otherwise failed to follow the requirements of this part.

§ 150.570 What procedures govern the revocation?

The procedures for revocation of fiduciary powers are set forth in 12 U.S.C. 1464(n)(10). The OCC will conduct the hearing required under 12 U.S.C. 1464(n)(10)(B) under part 109 of this chapter.

Subpart E—Activities Exempt From This Part

§ 150.580 When may I conduct fiduciary activities without obtaining OCC approval?

Subject to the requirements of this subpart E, you do not need OCC approval under subpart B if you conduct fiduciary activities in the following fiduciary capacities:

- (a) Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d)).
- (b) Trustee or custodian of a Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code of 1954 (26 U.S.C. 408(a)).

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§ 150.590 What standards must I observe when acting in exempt fiduciary capacities?

You must observe principles of sound fiduciary administration, including those related to recordkeeping and segregation of assets.

§ 150.600 How may funds be invested when I act in an exempt fiduciary capacity?

If you act in an exempt fiduciary capacity under §150.580, the funds of the fiduciary account may be invested only in the following:

- (a) Your accounts, deposits, obligations, or securities.
- (b) Other assets as the customer may direct, provided you do not exercise any investment discretion and do not directly or indirectly provide any investment advice for the fiduciary account.

§ 150.610 What disclosures must I make when acting in exempt fiduciary capacities?

(a) If you act in an exempt fiduciary capacity under §150.580 and fiduciary investments are not limited to accounts or deposits insured by the FDIC, you must include the following language in bold type on the first page of any contract documents:

(b) Funds invested pursuant to this agreement are not insured by the FDIC merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of a Federal savings association are insured by the FDIC, subject to its rules and regulations.

§ 150.620 May I receive compensation for acting in exempt fiduciary capacities?

You may receive reasonable compensation.

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Subpart A—Recordkeeping Requirements

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Subpart C—Settlement of Securities Transactions

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- 151.150 How do my officers and employees file reports of personal securities trading transactions?

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

SOURCE: 76 FR 49008, Aug. 9, 2011, unless otherwise noted.

§ 151.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a Federal savings association (“you”) effects certain securities transactions for customers.

§ 151.20 Must I comply with this part?

(a) *General.* Except as provided under paragraph (b) of this section, you must comply with this part when:

- (1) You effect a securities transaction for a customer.
- (2) You effect a transaction in government securities.
- (3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. You also must comply with 12 CFR part 150 when you effect such a transaction.

(b) *Exceptions—*(1) *Small number of transactions.* You are not required to