

the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

(b) *Acting in a fiduciary capacity in more than one state.* If a national bank acts in a fiduciary capacity in more than one state, the bank may compute the amount of securities that are required to be deposited for each state on the basis of the amount of assets for which the bank is acting in a fiduciary capacity at offices located in that state. If state law requires a deposit of securities on a basis other than assets (e.g., a requirement to deposit a fixed amount or an amount equal to a percentage of capital), the bank may compute the amount of deposit required in that state on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

[61 FR 68554, Dec. 30, 1996, as amended at 66 FR 34798, July 2, 2001; 82 FR 8105, Jan. 23, 2017]

§ 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,

¹In 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.

²A 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.

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 either for public inspection at its main office during all banking hours or on its Web site and shall provide a written or electronic 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

(3) *Proportionate interests.* Each participating account in a collective investment fund must have a proportionate interest in all the fund's assets.

(4) *Valuation—(i) Frequency of valuation.* A bank administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A bank shall determine the value of the fund's assets that are not readily marketable at least once a year.

(ii) *General method of valuation.* Except as provided in paragraph (b)(4)(iii) of this section, a bank shall value each fund asset at mark-to-market value as of the date set for valuation, unless the bank cannot readily ascertain mark-to-market value, in which case the bank shall use a fair value determined in good faith.

(iii) *Short-term investment funds (STIFs) method of valuation.* A bank may value a STIF's assets on a cost basis, rather than mark-to-market value as provided in paragraph (b)(4)(ii) of this section, for purposes of admissions and withdrawals, if the Plan includes appropriate provisions, consistent with this part, requiring the STIF to:

(A) Operate with a stable net asset value of \$1.00 per participating interest as a primary fund objective;

(B) Maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average

³If 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)).

Comptroller of the Currency, Treasury

§ 9.18

portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7);

(C) Accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity;

(D) Hold the STIF's assets until maturity under usual circumstances;

(E) Adopt portfolio and issuer qualitative standards and concentration restrictions;

(F) Adopt liquidity standards that include provisions to address contingency funding needs;

(G) Adopt shadow pricing procedures that:

(1) Require the bank to calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost price per participating interest, at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant; and

(2) Require the bank, in the event the difference calculated pursuant to this subparagraph exceeds \$0.005 per participating interest, to take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF;

(H) Adopt procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest that shall provide for:

(1) The periodic stress testing, at least on a calendar month basis and at such intervals as an independent risk manager or a committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions;

(2) Stress testing based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of

spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF;

(3) A stress testing report on the results of such testing to be provided to the independent risk manager or the committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management that shall include: the date(s) on which the testing was performed; the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its net asset value per participating interest calculated using amortized cost to exceed \$0.005; and an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year; and

(4) Reporting adverse stress testing results to the bank's senior risk management that is independent from the STIF's investment management.

(I) Adopt procedures that require a bank to disclose to STIF participants and to the OCC's Asset Management Group, Credit & Market Risk Division, within five business days after each calendar month-end, the fund's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost net asset values both with and without capital support agreements; the dollar-weighted average portfolio maturity; the dollar-weighted average portfolio life maturity of the STIF as of the last business day of the prior calendar month; and for each security held by the STIF as of the last business day of the prior calendar month:

(1) The name of the issuer;

(2) The category of investment;

(3) The Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier;

(4) The principal amount;

(5) The maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(6) The final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(7) The coupon or yield; and

(8) The amortized cost value;

(J) Adopt procedures that require a bank that administers a STIF to notify the OCC's Asset Management Group, Credit & Market Risk Division, prior to or within one business day thereafter of the following:

(1) Any difference exceeding \$0.0025 between the net asset value and the mark-to-market value of a STIF participating interest as calculated using the method set forth in paragraph (b)(4)(iii)(G)(1) of this section;

(2) When a STIF has re-priced its net asset value below \$0.995 per participating interest;

(3) Any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants;

(4) Any delays or suspensions in honoring STIF participating interest withdrawal requests;

(5) Any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; or

(6) In those situations when a bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable net asset value per participating interest;

(K) Adopt procedures that in the event a STIF has re-priced its net asset value below \$0.995 per participating interest, the bank administering the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market net asset value; and

(L) Adopt procedures that, in the event a bank suspends or limits withdrawals and initiates liquidation of the

STIF as a result of redemptions, require the bank to:

(1) Determine that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market net asset value per participating interest may result in material dilution of participating interests or other unfair results to participating accounts;

(2) Formally approve the liquidation of the STIF; and

(3) Facilitate the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

(iv) *Reservation of authority.* Notwithstanding paragraph (b)(4)(iii)(B) of this section, during periods of market stress negatively affecting, on a temporary basis, the ability of banks to operate STIFs in compliance with the requirements of the paragraph:

(A) The OCC may issue an administrative order specifying, for purposes of paragraph (b)(4)(iii)(B) of this section, temporary revisions to the length of the dollar-weighted average portfolio maturity requirement, the length of dollar-weighted average portfolio life maturity, and the manner of determining such limits;

(B) A bank seeking to comply with paragraph (b)(4)(iii)(B) will be deemed to be in compliance with that paragraph's requirements by complying with the limits or other revisions, and any applicable conditions, described in the administrative order; and

(C) The OCC will publish the administrative order on www.occ.gov and through other methods, as appropriate.

(5) *Admission and withdrawal of accounts—(i) In general.* A bank administering a collective investment fund shall admit an account to or withdraw an account from the fund only on the basis of the valuation described in paragraph (b)(4) of this section.

(ii) *Prior request or notice.* A bank administering a collective investment fund may admit an account to or withdraw an account from a collective investment fund only if the bank has approved a request for or a notice of intention of taking that action on or before the valuation date on which the admission or withdrawal is based. No requests or notices may be canceled or

countermanded after the valuation date.

(iii) *Prior notice period for withdrawals from funds with assets not readily marketable.* (A) A bank administering a collective investment fund described in paragraph (a)(2) of this section that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals.

(B) A bank that requires a prior notice period for withdrawals must withdraw an account from the fund within the prior notice period or, if permissible under the fund's written plan, within one year after the date on which notice was required, except as described in paragraph (b)(5)(iii)(C) of this section.

(C) A bank may withdraw an account from the fund up to one year after the withdrawal period described in paragraph (b)(5)(iii)(B) of this section, with the OCC's approval, provided that the following conditions are met:

(1) The fund's written plan, including its notice and withdrawal policy, authorizes an extended withdrawal period and is fully disclosed to fund participants;

(2) The bank's board of directors, or a committee authorized by the board of directors, determines that, due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants;

(3) The bank's board of directors, or a committee authorized by the board of directors, determines that the extended withdrawal period is consistent with 12 CFR part 9 and applicable law;

(4) The bank's board of directors, or a committee authorized by the board of directors, represents that the bank will act upon any withdrawal request as soon as practicable and consistent with its fiduciary duties; and

(5) Any other condition imposed by the OCC, if the OCC determines that the condition is necessary or appropriate to protect the interests of fund participants.

(D) Upon request by a bank, the OCC may approve an extension beyond the one-year extension period described in

paragraph (b)(5)(iii)(C) of this section if the OCC determines that the bank has made a good faith effort to satisfy withdrawal requests and the bank has been unable to satisfy such requests without causing harm to participants due to ongoing severe market conditions. The bank must also continue to satisfy the conditions described in paragraph (b)(5)(iii)(C) of this section. Extensions under this paragraph must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

(iv) *Method of distributions.* A bank administering a collective investment fund shall make distributions to accounts withdrawing from the fund in cash, ratably in kind, a combination of cash and ratably in kind, or in any other manner consistent with applicable law in the state in which the bank maintains the fund.

(v) *Segregation of investments.* If an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal but the investment is not distributed ratably in kind, the bank shall segregate and administer it for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(6) *Audits and financial reports—(i) Annual audit.* At least once during each 12-month period, a bank administering a collective investment fund shall arrange for an audit of the collective investment fund by auditors responsible only to the board of directors of the bank.⁴

(ii) *Financial report.* At least once during each 12-month period, a bank administering a collective investment fund shall prepare a financial report of the fund based on the audit required by paragraph (b)(6)(i) of this section. The report must disclose the fund's fees and

⁴If 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)(6)(i) as a result of its compliance with section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)), if the bank has access to the audit reports of the fund.

expenses in a manner consistent with applicable law in the state in which the bank maintains the fund. This report must contain a list of investments in the fund showing the cost and current market value of each investment, and a statement covering the period after the previous report showing the following (organized by type of investment):

(A) A summary of purchases (with costs);

(B) A summary of sales (with profit or loss and any other investment changes);

(C) Income and disbursements; and

(D) An appropriate notation of any investments in default.

(iii) *Limitation on representations.* A bank may include in the financial report a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. A bank may not publish in the financial report any predictions or representations as to future performance. In addition, with respect to funds described in paragraph (a)(1) of this section, a bank may not publish the performance of individual funds other than those administered by the bank or its affiliates.

(iv) *Availability of the report.* A bank administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The bank may provide a copy of the financial report to prospective customers. In addition, the bank shall provide a copy of the report upon request to any person for a reasonable charge.

(7) *Advertising restriction.* A bank may not advertise or publicize any fund authorized under paragraph (a)(1) of this section, except in connection with the advertisement of the general fiduciary services of the bank.

(8) *Self-dealing and conflicts of interest.* A national bank administering a collective investment fund must comply with the following (in addition to §9.12):

(i) *Bank interests.* A bank administering a collective investment fund may not have an interest in that fund

other than in its fiduciary capacity. If, because of a creditor relationship or otherwise, the bank acquires an interest in a participating account, the participating account must be withdrawn on the next withdrawal date. However, a bank may invest assets that it holds as fiduciary for its own employees in a collective investment fund.

(ii) *Loans to participating accounts.* A bank administering a collective investment fund may not make any loan on the security of a participant's interest in the fund. An unsecured advance to a fiduciary account participating in the fund until the time of the next valuation date does not constitute the acquisition of an interest in a participating account by the bank.

(iii) *Purchase of defaulted investments.* A bank administering a collective investment fund may purchase for its own account any defaulted investment held by the fund (in lieu of segregating the investment in accordance with paragraph (b)(5)(v) of this section) if, in the judgment of the bank, the cost of segregating the investment is excessive in light of the market value of the investment. If a bank elects to purchase a defaulted investment, it shall do so at the greater of market value or the sum of cost and accrued unpaid interest.

(9) *Management fees.* A bank administering a collective investment fund may charge a reasonable fund management fee only if:

(i) The fee is permitted under applicable law (and complies with fee disclosure requirements, if any) in the state in which the bank maintains the fund; and

(ii) The amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

(10) *Expenses.* A bank administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund, to the extent not prohibited by applicable law in the state in which the bank maintains the fund. However, a bank

Comptroller of the Currency, Treasury

§ 9.20

shall absorb the expenses of establishing or reorganizing a collective investment fund.

(11) *Prohibition against certificates.* A bank administering a collective investment fund may not issue any certificate or other document representing a direct or indirect interest in the fund, except to provide a withdrawing account with an interest in a segregated investment.

(12) *Good faith mistakes.* The OCC will not deem a bank's mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund to be a violation of this part if, promptly after the discovery of the mistake, the bank takes whatever action is practicable under the circumstances to remedy the mistake.

(c) *Other collective investments.* In addition to the collective investment funds authorized under paragraph (a) of this section, a national bank may collectively invest assets that it holds as fiduciary, to the extent not prohibited by applicable law, as follows:

(1) *Single loans or obligations.* In the following loans or obligations, if the bank's only interest in the loans or obligations is its capacity as fiduciary:

(i) A single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or a single fixed amount security, obligation, or other property, either real, personal, or mixed, of a single issuer; or

(ii) A variable amount note of a borrower of prime credit, if the bank uses the note solely for investment of funds held in its fiduciary accounts.

(2) *Mini-funds.* In a fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act, that the bank considers too small to be invested separately to advantage. The total assets in the fund must not exceed \$1,500,000 and the number of participating accounts must not exceed 100. The OCC shall adjust this \$1,500,000 threshold amount on January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical

Workers (CPI-W) that was in effect on the preceding June 1, rounded to the nearest \$100 increment, and make this adjusted amount available to the public.

(3) *Trust funds of corporations and closely-related settlors.* In any investment specifically authorized by the instrument creating the fiduciary account or a court order, in the case of trusts created by a corporation, including its affiliates and subsidiaries, or by several individual settlors who are closely related.

(4) *Other authorized funds.* In any collective investment authorized by applicable law, such as investments pursuant to a state pre-need funeral statute.

(5) *Special exemption funds.* In any other manner described by the bank in a written plan approved by the OCC.⁵ In order to obtain a special exemption, a bank shall submit to the OCC a written plan that sets forth:

(i) The reason that the proposed fund requires a special exemption;

(ii) The provisions of the proposed fund that are inconsistent with paragraphs (a) and (b) of this section;

(iii) The provisions of paragraph (b) of this section for which the bank seeks an exemption; and

(iv) The manner in which the proposed fund addresses the rights and interests of participating accounts.

[61 FR 68554, Dec. 30, 1996, as amended at 68 FR 70131, Dec. 17, 2003; 77 FR 61237, Oct. 9, 2012; 82 FR 8105, Jan. 23, 2017; 85 FR 16892, Mar. 25, 2020; 85 FR 49232, Aug. 13, 2020; 86 FR 28241, May 26, 2021]

§ 9.20 Transfer agents.

(a)(1) *Registration.* An application for registration under Section 17A(c) of the Securities Exchange Act of 1934 of a transfer agent for which the OCC is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Securities Exchange Act of 1934, shall be filed with the OCC on FFIEC Form TA-1, in accordance with the instructions contained therein. Registration shall become effective 30 days after the date

⁵Any institution that must comply with this section in order to receive favorable tax treatment under 26 U.S.C. 584 (namely, any corporate fiduciary) may seek OCC approval of special exemption funds in accordance with this paragraph (c)(5).