

## § 550.290

12 CFR 9.18, you must also file that document with the appropriate Regional Office at § 516.40(a) of this chapter. The OTS may review such documents for compliance with this part and other laws and regulations.

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

[62 FR 67703, Dec. 30, 1997, as amended at 66 FR 13006, Mar. 2, 2001]

### FUNDS AWAITING INVESTMENT OR DISTRIBUTION

#### **§ 550.290 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.

#### **§ 550.300 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.

#### **§ 550.310 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

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under the control of appropriate fiduciary officers and employees.

[62 FR 67703, Dec. 30, 1997, as amended at 67 FR 76299, Dec. 12, 2002]

#### **§ 550.320 What is acceptable collateral for uninsured deposits?**

Any of the following is acceptable collateral for self deposits or affiliate deposits under § 550.310:

(a) Direct obligations of the United States, or other obligations fully guaranteed 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 OTS 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

#### **§ 550.330 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.

#### **§ 550.340 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 through the receipt of a stock dividend resulting in fractional share holdings.

**§ 550.350 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 OTS 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).

**§ 550.360 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.

**§ 550.370 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

**§ 550.380 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.

**§ 550.390 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.

**§ 550.400 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

**§ 550.410 What records must I keep?**

You must keep adequate records for all fiduciary accounts. For example,