

§ 550.350

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).

12 CFR Ch. V (1–1–11 Edition)

§ 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, you must keep documents on the establishment and termination of each fiduciary account.

§ 550.420 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.

§ 550.430 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

§ 550.440 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.

§ 550.450 What standards govern the conduct of the audit?

Auditors must follow generally accepted standards for attestation engagements and other standards established by the OTS. 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.

§ 550.460 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.

§ 550.470 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.

§ 550.480 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

§ 550.490 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 § 550.510, 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.