within 30 calendar days of such agreement.

The Comptroller of the Currency shall be considered delinquent if it fails to return an overpayment in accordance with the time limitations specified in this paragraph (b). The Comptroller of the Currency shall pay interest on any such delinquent payments.

(c) Interest on delinquent payments, as described in paragraphs (a) and (b) of this section, will be assessed beginning the first calendar day on which payment is considered delinquent, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United States Treasury Department's current value of funds rate (the ''TFRM rate''); that rate is issued under the Treasury Fiscal Requirements Manual and is published quarterly in the FEDERAL REGISTER. The interest rates applicable to a delinquent payment will be determined as follows:

(1) For delinquent days occurring from January 1 to March 31, the rate will be the TFRM rate that is published the preceding December for the first quarter of the ensuing year.

(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; 70 FR 69643, Nov. 17, 2005; 76 FR 43568, July 21, 2011]

§ 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 OCC 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, as amended at 70 FR 69644, Nov. 17, 2005]

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

REGULATIONS

INTERPRETATIONS

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.

(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.

(j) *Trust office* means an office of a national bank, other than a main office or a branch, at which the bank engages in one or more of the activities specified in §9.7(d). Pursuant to 12 U.S.C. 36(j), a trust office is not a ''branch'' for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

(k) *Trust representative office* means an office of a national bank, other than a main office, branch, or trust office, at which the bank performs activities ancillary to its fiduciary business, but does not engage in any of the activities specified in §9.7(d). Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer (*e.g.*, forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); 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 the purposes of this definition. Pursuant to 12 U.S.C. 36(j), a trust representative office is not a ''branch'' for purposes of 12 U.S.C. 36, unless it is also an office at which deposits are received, or checks paid, or money lent.

[61 FR 68554, Dec. 30, 1996, as amended at 66 FR 34797, July 2, 2001]

§ 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 national bank that has obtained the OCC s approval to exercise fiduciary powers is not required to obtain the OCC s prior approval to engage in any of the activities specified in § 9.7(d) in a new state or to conduct, in a new state, activities that are ancillary to its fiduciary business. Instead, the national bank must follow the notice procedures prescribed by 12 CFR 5.26(e).

(c) 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.

[61 FR 68554, Dec. 30, 1996, as amended at 66 FR 34798, July 2, 2001]

§ 9.4 Administration of fiduciary powers.

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

§ 9.6 Review of fiduciary accounts.

(a) *Pre-acceptance review.* Before accepting a fiduciary account, a national bank shall review the prospective account to determine whether it can properly administer the account.

(b) *Initial post-acceptance review.* Upon the acceptance of a fiduciary account for which a national bank has investment discretion, the bank shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

(c) *Annual review.* At least once during every calendar year, a bank shall conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

§ 9.7 Multi-state fiduciary operations.

(a) *Acting in a fiduciary capacity in more than one state.* Pursuant to 12 U.S.C. 92a and this section, a national bank may act in a fiduciary capacity in any state. If a national bank acts, or proposes to act, in a fiduciary capacity in a particular state, the bank may act in the following specific capacities:

(1) Any of the eight fiduciary capacities expressly listed in 12 U.S.C. 92a(a), unless the state prohibits its own state banks, trust companies, and other corporations that compete with national banks in that state from acting in that capacity; and

(2) Any other fiduciary capacity the state permits for its own state banks, trust companies, or other corporations that compete with national banks in that state.

(b) *Serving customers in other states.* While acting in a fiduciary capacity in one state, a national bank may market its fiduciary services to, and act as fiduciary for, customers located in any state, and it may act as fiduciary for relationships that include property located in other states. The bank may use a trust representative office for this purpose.

(c) *Offices in more than one state.* A national bank with fiduciary powers may establish trust offices or trust representative offices in any state.

(d) *Determination of the state referred to in 12 U.S.C. 92a.* For each fiduciary relationship, the state referred to in section 92a is the state in which the bank acts in a fiduciary capacity for that relationship. A national bank acts in a fiduciary capacity in the state in which it accepts the fiduciary appointment, executes the documents that create the fiduciary relationship, and makes discretionary decisions regarding the investment or distribution of fiduciary assets. If these activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity for section 92a purposes is the state that the bank designates from among those states.

(e) *Application of state law*—(1) *State laws used in section 92a.* The state laws that apply to a national bank's fiduciary activities by virtue of 12 U.S.C. 92a are the laws of the state in which the bank acts in a fiduciary capacity.

(2) *Other state laws.* Except for the state laws made applicable to national banks by virtue of 12 U.S.C. 92a, state laws limiting or establishing preconditions on the exercise of fiduciary powers are not applicable to national banks.

[66 FR 34798, July 2, 2001]

§ 9.8 Recordkeeping.

(a) *Documentation of accounts.* A national bank shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts.

(b) *Retention of records.* A national bank shall retain records described in paragraph (a) of this section for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* A national bank shall ensure that records described in paragraph (a) of this section are separate and distinct from other records of the bank.

§ 9.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year, a national bank shall arrange for a suitable audit (by internal or external auditors) of all significant fiduciary activities, under the direction of its fiduciary audit committee, unless the bank adopts a continuous audit system in accordance with paragraph (b) of this section. The bank shall 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.* In lieu of performing annual audits under paragraph (a) of this section, a national bank may adopt a continuous audit system under which the bank arranges for a discrete audit (by internal or external auditors) of each significant fiduciary activity (*i.e.,* on an activity-by-activity basis), under the direction of its fiduciary audit committee, at an interval commensurate with the nature and risk of that activity. Thus, certain fiduciary activities may receive audits at intervals greater or less than one year, as appropriate. A bank that adopts a continuous audit system shall note the results of all discrete audits performed 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 .

(c) *Fiduciary audit committee.* A national bank's fiduciary audit committee must consist of a committee of

the bank's directors or an audit committee of an affiliate of the bank. However, in either case, the committee:

(1) Must not include any officers of the bank or an affiliate who participate significantly in the administration of the bank's fiduciary activities; and

(2) Must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the bank.

§ 9.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* With respect to a fiduciary account for which a national bank has investment discretion or discretion over distributions, the bank may not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. With respect to a fiduciary account for which a national bank has investment discretion, the bank shall obtain for funds awaiting investment or distribution a rate of return that is consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* A national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the bank, unless prohibited by applicable law. To the extent that the funds are not insured by the Federal Deposit Insurance Corporation, the bank shall set aside collateral as security, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A national bank may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Securities that qualify as eligible for investment by national banks pursuant to 12 CFR part 1;

(iii) Readily marketable securities of the classes in which state banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law;

(iv) Surety bonds, to the extent they provide adequate security, unless prohibited by applicable law; and

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

(c) *Affiliate deposits.* A national bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law. A national bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, unless prohibited by applicable law.

§ 9.11 Investment of fiduciary funds.

A national bank shall invest funds of a fiduciary account in a manner consistent with applicable law.

§ 9.12 Self-dealing and conflicts of interest.

(a) *Investments for fiduciary accounts*—(1) *In general.* Unless authorized by applicable law, a national bank may not invest funds of a fiduciary account for which a national bank has investment discretion in the stock or obligations of, or in assets acquired from: the bank or any of its directors, officers, or employees; affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank.

(2) *Additional securities investments.* If retention of stock or obligations of the bank or its affiliates in a fiduciary account is consistent with applicable law, the bank may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

(b) *Loans, sales, or other transfers from fiduciary accounts*—(1) *In general.* A national bank may not lend, sell, or otherwise transfer assets of a fiduciary account for which a national bank has investment discretion to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank, unless:

(i) The transaction is authorized by applicable law;

(ii) Legal counsel advises the bank in writing that the bank has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the bank, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in §9.18(b)(8)(iii) for defaulted investments; or

(iv) Required in writing by the OCC.

(2) *Loans of funds held as trustee.* Notwithstanding paragraph (b)(1) of this section, a national bank may not lend to any of its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

(c) *Loans to fiduciary accounts.* A national bank may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A national bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A national bank may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

§9.13 Custody of fiduciary assets.

(a) *Control of fiduciary assets.* A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A national bank shall keep the assets of fiduciary accounts separate from the assets of the bank. A national bank shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in §9.18.

§9.14 Deposit of securities with state authorities.

(a) *In general.* If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank of the district in which the national bank is located, to be held for 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]

§ 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, 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] In 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.

[2] A 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.

(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 for public inspection at its main office during all banking hours, and shall provide a 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 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

[3] If 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)).

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.

(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 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.

(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

[4] If 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.

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 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 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 $1,000,000 and the number of participating accounts must not exceed 100.

(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]

§ 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 an application on Form TA–1 is filed unless the OCC accelerates, denies, or postpones such registration in accordance with section 17A(c) of the Securities Exchange Act of 1934.

[5] Any 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).

(2) *Amendments to registration.* Within 60 days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading, or incomplete, the registrant shall file an amendment on FFIEC Form TA–1 correcting the inaccurate, misleading, or incomplete information. The filing of an amendment to an application for registration as a transfer agent under this section, which registration has not become effective, shall postpone the effective date of the registration for 30 days following the date on which the amendment is filed unless the OCC accelerates, denies, or postpones the registration in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

(3) *Withdrawal from registration.* Any registered national bank transfer agent that ceases to engage in activities that require registration under Section 17A(c) of the Securities Exchange Act of 1934 may file a written notice of withdrawal from registration with the OCC. Deregistration shall be effective 60 days after filing.

(4) *Reports.* Every registration or amendment filed under this section shall constitute a report or application within the meaning of Sections 17, 17A(c), and 32(a) of the Securities Exchange Act of 1934.

(b) *Operational and reporting requirements.* The rules adopted by the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents apply to the domestic activities of registered national bank transfer agents.

[73 FR 22242, Apr. 24, 2008]

INTERPRETATIONS

§ 9.100 Acting as indenture trustee and creditor.

With respect to a debt securities issuance, a national bank may act both as indenture trustee and as creditor until 90 days after default, if the bank maintains adequate controls to manage the potential conflicts of interest.

§ 9.101 Providing investment advice for a fee.

(a) *In general.* The term ''fiduciary capacity'' at §9.2(e) is defined to include ''investment adviser, if the bank receives a fee for its investment advice.'' In other words, if a bank is providing investment advice for a fee, then it is acting in a fiduciary capacity. For purposes of that definition, ''investment adviser'' generally means a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Additionally, the qualifying phrase ''if the bank receives a fee for its investment advice'' excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities*—(1) *Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. Full-service brokerage involves investment advice for a fee if a nonbank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advisory and counseling activities, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities (*i.e.*, the bank has no investment discretion) where investment advice and research may be made available to the client, but the fee does not depend on the provision of investment advice;

(iii) Investment advisory activities incidental to acting as a municipal securities dealer;

(iv) Real estate management services provided to other financial institutions;

(v) Real estate consulting services, including acting as a finder in locating, analyzing, and making recommendations regarding the purchase of property, and making recommendations concerning the sale of property;

(vi) Advisory activities concerning bridge loans;

(vii) Advisory activities for homeowners' associations;

(viii) Advisory activities concerning tax planning and structuring; and

(ix) Investment advisory activities authorized by the OCC under 12 U.S.C. 24(Seventh) as incidental to the business of banking.

[63 FR 6473, Feb. 9, 1998]

PART 10—MUNICIPAL SECURITIES DEALERS

Sec.
10.1 Scope.
10.2 Filing requirements.

AUTHORITY: 12 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

SOURCE: 63 FR 29094, May 28, 1998, unless otherwise noted.

§ 10.1 Scope.

This part applies to:

(a) Any national bank and separately identifiable department or division of a national bank (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or to be associated with a national bank in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G–3 of the Municipal Securities Rulemaking Board (MSRB).[1]

[63 FR 29094, May 28, 1998, as amended at 73 FR 22242, Apr. 24, 2008]

§ 10.2 Filing requirements.

(a) A national bank shall use Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G–7(b)(i)–(x) from a person identified in §10.1(b). A national bank receiving a completed MSD–4 form from a person identified in §10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank must submit Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person's association with the bank as a municipal securities principal or municipal securities representative.

(c) Forms MSD–4 and MSD–5, with instructions, may be obtained by contacting the OCC at 250 E Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities.

[63 FR 29094, May 28, 1998, as amended at 63 FR 71343, Dec. 24, 1998]

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Sec.
11.1 Authority and OMB control number.
11.2 Reporting requirements for registered national banks.
11.3 Filing requirements and inspection of documents.
11.4 Filing fees.

AUTHORITY: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

SOURCE: 57 FR 46084, Oct. 7, 1992; 57 FR 54499, Nov. 19, 1992.

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks with

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board at 1150 18th Street, NW., Suite 400, Washington, DC 20036–3816.