

## §9.1

## 12 CFR Ch. I (1–15 Edition)

9.101 Providing investment advice for a fee.

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 capac-

ity 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