

FEDERAL RESERVE BANK
OF NEW YORK

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REGULATION F, REVISED EFFECTIVE JUNE 1, 1936

Trust Powers of National Banks

*To each Member Bank in the
Second Federal Reserve District:*

Enclosed is a printed copy of Regulation F, revised effective June 1, 1936 (superseding Regulation F, Series of 1930), issued by the Board of Governors of the Federal Reserve System, relating to "Trust Powers of National Banks". At the request of the Board, a copy of this regulation is being sent to each national bank in the Second Federal Reserve District. A copy of the regulation is also being sent to each State member bank in this district for its information.

Any inquiry relating to Regulation F should be addressed to the Federal Reserve Bank of New York. Additional copies of the regulation may be obtained upon request.

GEORGE L. HARRISON,
President.

**BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM**

TRUST POWERS OF NATIONAL BANKS



REGULATION F

This Regulation as printed herewith is in the form as revised
effective June 1, 1936



INQUIRIES REGARDING THIS REGULATION

Any inquiry relating to this regulation should be addressed to the Federal Reserve bank of the district in which the inquiry arises.

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REGULATION F

Revised effective June 1, 1936

(Superseding Regulation F, Series of 1930)

TRUST POWERS OF NATIONAL BANKS

AUTHORITY FOR REGULATION

This regulation is issued under authority of the provisions of section 11(k) of the Federal Reserve Act, as amended, which, together with related provisions of law, are published in the Appendix hereto.

SECTION 1. APPLICATIONS

A national bank desiring to exercise any or all of the powers authorized by section 11(k) of the Federal Reserve Act, as amended, shall make application to the Board of Governors of the Federal Reserve System for a special permit authorizing such national bank to exercise such powers. If the applying bank is not authorized to exercise any of such powers, the application should be made on Form 61; and if the applying bank is authorized to exercise one or more but not all of such powers, the application should be made on Form 61b.

In the case of the organization of a new national bank, the conversion of a State bank or trust company into a national bank, or the consolidation of two or more national banks or of a State bank or trust company with a national bank under the charter of the latter, when none of the national banks involved in such consolidations is authorized to exercise trust powers, application for such a permit may be made in advance on behalf of the new, converted or consolidated national bank, and the permit may be issued simultaneously with the consummation of such organization, conversion or consolidation. Such application may be made by the organizers in the case of a new national bank, by the State bank or trust company in the case of a conversion, and by the national bank the charter of which is to be retained in the case of a consolidation.

Each application made under the provisions of this section shall be executed and forwarded in duplicate, together with duplicate copies of any documents containing any information submitted with the application, to the Federal Reserve bank of the district in which the applying bank is located.

SECTION 2. CONSIDERATION OF APPLICATIONS

In passing upon an application for permission to exercise the fiduciary powers authorized by section 11(k) of the Federal Reserve Act,

as amended, the Board of Governors of the Federal Reserve System will give special consideration to the following matters:

(a) Whether, under the provisions of section 11(k) of the Federal Reserve Act, as amended, the bank has sufficient capital and surplus to render it eligible to receive permission to exercise the fiduciary powers applied for and whether the granting of any or all of such powers would be in contravention of State or local law;

(b) The needs of the community for trust service of the kind applied for and the probable volume of such trust business available to the bank;

(c) The general condition of the bank, particularly the adequacy of its net capital and surplus funds in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the proposed exercise of trust powers;

(d) The general character and ability of the management of the bank;

(e) The nature of the supervision to be given to the proposed trust activities, including the qualifications and experience of the members of the proposed trust investment committee;

(f) The qualifications, experience and character of the proposed executive officer or officers of the trust department;

(g) Whether the bank has available competent legal counsel to advise and pass upon trust matters whenever necessary; and

(h) Any other facts and circumstances that seem to it proper.

SECTION 3. CONSOLIDATION OF TWO OR MORE NATIONAL BANKS

Where two or more national banks consolidate under the provisions of the Act of Congress approved November 7, 1918,¹ as amended, and any one of such banks has, prior to such consolidation, received a permit from the Board of Governors of the Federal Reserve System to act in fiduciary capacities which is in force at the time of the consolidation, the rights existing under such permit pass by operation of law to the consolidated bank and the consolidated bank may act in such fiduciary capacities in the same manner and to the same extent as the bank to which such permit was originally issued; and no new application to continue to act in such capacities is necessary. However, in order that the records of the consolidated bank may be complete and that it may have convenient evidence of its right to exercise trust powers, the Board, upon receipt of advice from the Comptroller of the Currency that the consolidation has been consummated, will

¹ Applicable provisions of the Act of Congress approved November 7, 1918, as amended, are printed in the Appendix to this regulation.

issue a certificate to the consolidated bank showing its right to exercise the trust powers theretofore granted by the Board to any of the national banks taking part in the consolidation.

SECTION 4. CONSOLIDATION OF STATE BANK WITH NATIONAL BANK

Section 3 of the Act of Congress approved November 7, 1918,² as amended, authorizes any bank, trust company, savings bank, or other banking institution incorporated under the laws of any State or in the District of Columbia to be consolidated directly with a national bank located in the same State, county, city, town, or village under the charter of such national bank, and provides in effect that, when such consolidation is consummated, the consolidated national bank shall succeed to the specific fiduciary appointments, designations and nominations of the State institution at the time of the consolidation. It is not necessary for the national bank to have a permit from the Board of Governors of the Federal Reserve System in order to administer the specific trusts to which it thus succeeds, but the provision *does not confer upon the consolidated national bank the right to act generally in fiduciary capacities or to undertake any other trust business*. Unless the national bank already has a permit from the Board of Governors of the Federal Reserve System to act in fiduciary capacities which is in force at the time of the consolidation, it will be necessary for the bank to obtain such a permit before undertaking to act generally in fiduciary capacities or to accept any other trust business.

SECTION 5. CHANGE OF NAME

If a national bank has received a permit from the Board of Governors of the Federal Reserve System to act in fiduciary capacities and subsequently, while the permit is in force, changes its name under the provisions of the Act of Congress approved May 1, 1886,³ it is not necessary for the bank to make a new application to continue to act in such capacities. However, in order that the records of the bank may be complete and that it may have convenient evidence of its right to exercise trust powers under its new name, the Board, upon receipt of advice from the Comptroller of the Currency that such change in name has been legally effected, will issue a certificate to it under such new name evidencing its right to exercise the trust powers previously granted to it under its old name.

² Section 3 of the Act of Congress approved November 7, 1918, as amended, is printed in the Appendix to this regulation.

³ The applicable provisions of the Act of Congress approved May 1, 1886, are printed in the Appendix to this regulation.

SECTION 6. TRUST DEPARTMENT AND MANAGEMENT

(a) **Separate trust department.**—Every national bank which obtains permission from the Board of Governors of the Federal Reserve System to act in a fiduciary capacity shall, before undertaking to act in such capacity, establish a trust department which shall be separate and apart from every other department of the bank.

(b) **Directors' supervision of trust department.**—The board of directors is responsible for the investment of trust funds by the bank, the disposition of trust investments, the supervision of the trust department, the determination of the policies of such department and for the review of the actions of all committees appointed by the board of directors for the conduct of the trust department. The acceptance of all fiduciary accounts shall be approved by the board of directors or a committee appointed by such board, and the closing out or relinquishment of all such accounts shall be approved or ratified by the board of directors or a committee appointed by such board. Any such approval or ratification shall be recorded in the minutes of the board of directors or of such committee as the case may be.

(c) **Trust investment committee.**—Before any such national bank undertakes to act in any fiduciary capacity, the board of directors of the bank shall appoint a trust investment committee which shall be composed of at least three members, who shall be capable and experienced officers or directors of the bank. All investments of trust funds by the trust department of every such national bank shall be made, retained or disposed of only with the approval of the trust investment committee; and such committee shall keep minutes of all its meetings, showing the disposition of all matters considered and passed upon by it. Such committee shall, at least once during each period of twelve months, review all the assets held in or for each fiduciary account to determine their safety and current value and the advisability of retaining or disposing of them; and a report of all such reviews, together with the action taken as a result thereof, shall be noted in the minutes of the trust investment committee. Such committee may have such additional duties relating to the trust department as may be prescribed by the board of directors.

(d) **Executive officer.**—Before any such national bank undertakes to act in any fiduciary capacity, its trust department shall be placed under the management and immediate supervision of an executive officer or officers qualified and competent to administer trusts, and the duties of such officer or officers shall be prescribed by the board of directors of the bank. Such duties shall be evidenced by the by-laws of the bank or by a resolution duly adopted by and entered in the minutes of the board of directors. All officers and other persons taking

part in the operation of the trust department shall be adequately bonded.

(e) **Competent legal counsel.**—Every such national bank shall designate, employ or retain competent legal counsel who shall be readily available to pass upon trust matters and to advise with the bank and its trust department; but the bank shall not engage in the practice of law.

(f) **Principles of trust institutions.**—Every such national bank shall conform to sound principles in the operation of its trust department.⁴

SECTION 7. BOOKS AND ACCOUNTS

(a) **In general.**—Every national bank which has received permission from the Board of Governors of the Federal Reserve System to exercise fiduciary powers shall keep the books and records of the trust department separate and distinct from other records of the bank. All trust accounts opened shall be so kept as to enable the national bank to furnish such information or reports with respect thereto as may be required by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System. The records of the trust department shall contain full information relating to each trust.

(b) **Record of pending litigation.**—Every such national bank shall keep an adequate record of all litigation pending against it in connection with its administration of any trust.

SECTION 8. EXAMINATIONS OF TRUST DEPARTMENT

In addition to examinations by examiners appointed by the Comptroller of the Currency⁵ or designated by the Board of Governors of the Federal Reserve System, a committee of directors, exclusive of any active officers of the bank, shall, at least once during each period of twelve months, make suitable audits of the trust department or cause suitable audits of such department to be made by auditors responsible only to the board of directors, and shall, likewise at least once during each period of twelve months, ascertain by thorough examination made or caused to be made by such committee—

(1) Whether a review of all the assets in each trust as to their safety and current value and the advisability of retaining or dis-

⁴ The Statement of Principles of Trust Institutions approved by the Executive Council of the American Bankers Association under date of April 11, 1933, is included in the Appendix to this regulation and is commended to banks operating trust departments.

⁵ Section 11(k) of the Federal Reserve Act, as amended by the Banking Act of 1935, approved August 23, 1935, provides that "The State banking authorities may have access to reports of examination made by the Comptroller of the Currency in so far as such reports relate to the trust department of such bank, but nothing in this Act shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank."

While this provision denies to the State banking authorities the right to examine the trust department of any national bank without the bank's consent, it does not prohibit the bank from permitting an inspection of its records by any one it desires.

posing of them has been made in accordance with section 6(c) of this regulation;

(2) Whether trust funds awaiting investment or distribution have been held uninvested or undistributed any longer than was reasonably necessary.

Such committee shall promptly make a full report of such audits and examination, in writing, to the board of directors of the bank, together with a recommendation as to the action, if any, which may be necessary to correct any unsatisfactory conditions. The board of directors shall give due consideration to such report and recommendation, together with the latest report of examination by the Comptroller of the Currency or examiners designated by the Board of Governors of the Federal Reserve System⁶ furnished to the bank, and shall take such steps as are appropriate to correct any criticized matters. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors; and such report shall be made a part of the records of the bank.

SECTION 9. TRUST FUNDS AWAITING INVESTMENT OR DISTRIBUTION

(a) **In general.**—Funds received or held by a national bank as fiduciary awaiting investment or distribution shall not be held uninvested or undistributed by the bank any longer than is reasonably necessary.

(b) **Use in conduct of business of trustee bank.**—Funds received or held by a national bank as fiduciary awaiting investment or distribution shall not be used by the bank in the conduct of its business, unless the bank, under authorization by its board of directors, first delivers to the trust department, as collateral security—

(1) Bonds, notes, bills, certificates of indebtedness or other direct obligations of the United States, or obligations fully guaranteed by the United States as to principal and interest; or

(2) Other readily marketable securities of the classes in which State trust companies or State banks exercising trust powers are authorized or permitted to invest trust funds under the laws of the State in which such national bank is located; or

(3) Other readily marketable securities of the classes defined

⁶ This does not relieve the board of directors of any responsibility for prompt consideration of, and action on, matters criticized in the latest report of examination by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System furnished to the bank or for the prompt consideration and action on any matter coming to the attention of the board of directors from any other source which requires action for the protection of parties at interest.

as "investment securities" pursuant to section 5136 of the Revised Statutes of the United States, as amended.⁷

The securities so deposited as collateral shall be owned by the national bank and shall at all times be at least equal in market value to the amount of the trust funds so used in the conduct of the bank's business.⁸

SECTION 10. INVESTMENT OF TRUST FUNDS

(a) **Private trusts.**—Funds received or held by a national bank as fiduciary shall, with the approval of the trust investment committee and subject to the rules of law applicable to fiduciaries, be invested promptly and in strict accordance with the will, deed or other instrument creating the trust. When the instrument creating the trust contains provisions expressly authorizing the bank, its officers or its directors to exercise a discretion in the matter, funds received or held in trust shall be invested only with the approval of the trust investment committee. When such instrument does not specify the character or class of investments to be made and does not expressly vest in the bank, its officers or its directors a discretion in the matter, funds received or held in trust shall be invested, with the approval of the trust investment committee, in any investments in which corporate or individual fiduciaries in the State in which the bank is acting may lawfully invest.

(b) **Court trusts.**—A national bank acting in any fiduciary capacity under appointment by a court of competent jurisdiction shall, subject to the supervision of the trust investment committee, make all investments of funds received or held by it in trust under an order of that court, and copies of all such orders shall be filed and preserved with the records of the trust department of the bank. If the court order vests a discretion in the bank to invest funds received or held by it in trust, or if, under the laws of the State in which the bank is acting,

⁷ Section 5136 of the Revised Statutes of the United States, as amended, provides that as used in that section "the term 'investment securities' shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, and/or debentures commonly known as investment securities under such further definition of the term 'investment securities' as may by regulation be prescribed by the Comptroller of the Currency"; and a copy of the regulation prescribed by the Comptroller under the authority of section 5136 may be obtained upon request made to his office.

⁸ Section 11(k) of the Federal Reserve Act, as amended, requires that the national bank shall set aside in the trust department "United States bonds or other securities approved by the Board of Governors of the Federal Reserve System". This subsection of this regulation is intended as a general approval by the Board of all securities which comply with the requirements thereof and the Board will not give specific approval to any particular securities.

If a national bank desires to substitute securities for securities already deposited in the trust department as collateral for trust funds used in the conduct of the business of such bank, such a substitution may be made provided the substituted securities comply with the requirements of this subsection and the substituted securities and other securities so deposited as collateral at all times are at least equal in market value to the amount of trust funds so used in the conduct of the bank's business.

corporate fiduciaries appointed by the court are permitted to exercise such a discretion, the bank, with the approval of the trust investment committee, shall invest such funds in any investments in which corporate or individual fiduciaries in the State in which the bank is acting may lawfully invest.

(c) **Collective investments of trust funds.**—Funds received or held by a national bank as fiduciary shall not be invested in participations in pools of mortgage bonds or other securities, except when the cash balances to the credit of certain trust estates held by such national bank are too small to be invested separately to advantage.⁹ Such small amounts may, with the approval of the trust investment committee, be invested collectively, and participation certificates may be issued by the trust department to the various participating estates, provided—

(1) That the bank owns no participation in the securities in which such collective investments are made and has no interest in them except as trustee or other fiduciary; and

(2) That such collective investments are not prohibited by State law or by the instrument creating the trust.

SECTION 11. PURCHASE OR SALE OF TRUST ASSETS TO OR FROM TRUSTEE BANK OR ITS DIRECTORS, OFFICERS OR EMPLOYEES

(a) **Obligations of trustee bank or its directors, officers, etc.**—Funds received or held by a national bank as fiduciary shall not be invested in stock or obligations of, or property acquired from, the bank or its directors, officers, or employees, or their interests, or in stock or obligations of, or property acquired from, affiliates of the bank.¹⁰

(b) **Sale or transfer of trust assets to trustee bank or its directors, officers, etc.**—Trust assets shall not be sold or transferred to the national bank, to its directors, officers, or employees, or their interests, or to affiliates of the bank, except that, in cases in which the bank has been advised by its counsel in writing that it has incurred a contingent or potential liability to a trust and desires to relieve itself from such liability, such a sale or transfer may be made with the approval of the board of directors; provided that in all such cases the bank, upon the

⁹ This does not prevent the bank from investing the funds of several trusts in a single real estate loan of the kind which could be made by the bank under the provisions of section 24 of the Federal Reserve Act, as amended, if the bank owns no participation in the loan and has no interest therein except as trustee or other fiduciary.

¹⁰ Under recognized principles of sound practice regarding the handling of trust funds, a trustee or other fiduciary should not have any interest, direct or indirect, in the funds of a trust except as a fiduciary, and this requirement contemplates that the national bank will not invest trust funds in the obligations of any organization in which officers, directors, or employees of the bank have such an interest as might affect the exercise of the best judgment of the management of the bank in investing trust funds. This requirement shall not be deemed to prohibit investments which are expressly required by the instrument creating the trust or by court order.

consummation of the sale or transfer, shall reimburse the trust involved in cash or other acceptable assets.

(c) **Dealings between trust accounts.**—A national bank acting as fiduciary shall not make any advance to any trust from the funds belonging to any other trust, except when the making of such advances to a designated trust is specifically authorized by the trust instrument covering the trust from which such advances are made.

SECTION 12. CUSTODY OF TRUST SECURITIES AND INVESTMENTS

The securities and investments of each trust shall be kept separate from the properties of the bank, and the securities and investments of each trust also shall be kept separate from those of all other trusts except as provided in subsection (c) of section 10 of this regulation.¹¹ Trust securities and investments shall be placed in the joint custody of two or more officers or employees of the bank designated for that purpose by the board of directors of the bank; and all such officers and employees shall be adequately bonded.

SECTION 13. DEPOSIT OF SECURITIES WITH STATE AUTHORITIES

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, every national bank in that State which obtains permission from the Board of Governors of the Federal Reserve System to act in fiduciary capacities shall, before undertaking to act in any fiduciary capacity, make a similar deposit of securities with the State authorities. If the State authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Reserve bank of the district in which such national bank is located and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the State authorities.

SECTION 14. COMPENSATION OF BANK

(a) **In general.**—If the amount of the fee or compensation for acting in a fiduciary capacity is not regulated by State law or stipulated or provided for in the instrument creating the trust, a national bank acting in such capacity may charge or deduct not more than a reasonable fee or compensation for its services. When the bank is acting in a fiduciary capacity under appointment by a court, it may receive such fee or compensation as shall be lawfully allowed or approved by that court. All income derived from the investment of the funds of a trust,

¹¹ This does not prevent the bank from investing the funds of several trusts in a single real estate loan of the kind which could be made by the bank under the provisions of section 24 of the Federal Reserve Act, as amended, if the bank owns no participation in the loan and has no interest therein except as trustee or other fiduciary.

less a proper fee or compensation and all other proper charges, shall be paid over to, or credited to the account of, such trust.

(b) **Officer or employee of bank as co-fiduciary.**—No national bank shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any fee or other compensation for acting as a co-fiduciary with the bank in the administration of any trust accepted or undertaken by it.

SECTION 15. INSOLVENCY OR VOLUNTARY LIQUIDATION OF BANK

(a) **Insolvency.**—Whenever a national bank exercising fiduciary powers becomes insolvent and a receiver is appointed therefor by the Comptroller of the Currency, such receiver shall, pursuant to the instructions of the Comptroller and to the orders of the court or courts of appropriate jurisdiction, proceed to close such trusts and estates as can be closed promptly and transfer all other trusts and estates to properly appointed substitute fiduciaries.

(b) **Voluntary liquidation.**—Whenever a national bank exercising fiduciary powers is placed in voluntary liquidation, the liquidating agent shall, in accordance with the laws of the State in which such national bank is located, proceed at once to liquidate the affairs of the trust department as follows:

1. All court trusts and estates under the jurisdiction of a court shall be closed or disposed of as soon as practicable in accordance with the orders or instructions of the court having jurisdiction.
2. All voluntary trusts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor.
3. All other trusts shall be transferred by appropriate legal proceedings to properly appointed substitute fiduciaries.

SECTION 16. SURRENDER OF TRUST POWERS

(a) **Procedure.**—Any national bank which has been granted the right by the Board of Governors of the Federal Reserve System to act in any fiduciary capacity or capacities and which desires to surrender such right shall signify such desire through a resolution duly adopted by, and recorded in the minutes of, its board of directors. A properly certified copy of such resolution shall be filed with the Federal Reserve bank of the district in which such national bank is located and shall be accompanied by (1) a letter stating the reason why, or the purpose for which, such national bank wishes to surrender its right to exercise trust powers, unless such reason or purpose shall have been amply stated in the resolution itself, (2) the permit or permits previously issued by the Board to such national bank granting it the right to act in any fiduciary capacity, and (3) any certificate or certifi-

icates previously issued to such national bank by the Board under the provisions of sections 3 and 5 of this regulation, except that, in case any such permit or certificate shall have been lost or destroyed, an affidavit by any officer of such national bank as to such loss or destruction shall be filed in lieu of such lost or destroyed permit or certificate.

(b) **Words "Trust Company" as part of bank's title.**—Before issuing the certificate described in subsection (d) of this section of this regulation, the Board will require any national bank which desires to surrender its right to exercise trust powers, and which has the words "trust company" as part of its title, to eliminate such words from the title. The elimination of such words involving a change in the name of the bank is a matter within the jurisdiction of the Comptroller of the Currency. Such a national bank, therefore, at the time of the adoption of the resolution referred to in subsection (a) of this section of this regulation, should communicate with the Comptroller of the Currency for advice as to the procedure it will be necessary for it to pursue in order to eliminate such words. Advice that such national bank has taken this step should be given, in writing, to the Federal Reserve bank at the time of the filing of the documents required by subsection (a) of this section of this regulation.

(c) **Examination of trust department.**—Upon receipt of the documents referred to in subsection (a) of this section of this regulation, the Board will request the Comptroller of the Currency, upon the occasion of the next regular examination of such national bank, to have one of his examiners make an investigation of the trust department of the bank in order to determine whether the bank, pursuant to authority granted to it under section 11(k) of the Federal Reserve Act, has actually accepted or undertaken the exercise of any trust; and, if so, whether it appears from the records of the trust department in the case of each trust so accepted or undertaken—

(1) That all assets and papers belonging to the trust estate have been delivered by the bank to the person or persons entitled to receive them; and

(2) That the duties of the bank as fiduciary have been completely performed and that the bank has been discharged or otherwise properly relieved of all of its duties as fiduciary.

In exceptional cases, the Board may make, or may request the Comptroller of the Currency to make, a special examination of the trust department of such national bank in order to obtain the information referred to in this subsection.

(d) **Certificate of Board of Governors of the Federal Reserve System.**—If, upon the basis of the examination referred to in subsection

(c) of this section of this regulation, the Board shall be satisfied that the national bank desiring to surrender its right to exercise trust powers has never accepted or undertaken to exercise any trust or that its duties as fiduciary have been completely performed and that it has been discharged or otherwise properly relieved of all of its duties as fiduciary, and if, in the case of a national bank the title of which previously had included the words "trust company", the Board shall also be satisfied, from advice received from the Comptroller of the Currency, that the bank has properly eliminated these words from its title, the Board may, in its discretion, issue to such national bank a certificate certifying that such bank is no longer authorized to exercise any of the trust powers conferred upon it by the Board.¹²

SECTION 17. BOARD FORMS

All forms referred to in this regulation and all such forms as amended from time to time shall be a part of this regulation.

¹² Section 11(k) of the Federal Reserve Act provides that, upon the issuance of such a certificate by the Board, "such bank (1) shall no longer be subject to the provisions of this subsection or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (3) shall not exercise thereafter any of the powers granted by this subsection without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this subsection."

APPENDIX

Section 11(k) of the Federal Reserve Act, as amended by the Acts of Congress approved September 26, 1918, June 26, 1930, and August 23, 1935, provides as follows:

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

* * * * *

(k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act.

National banks exercising any or all of the powers enumerated in this subsection shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this subsection. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this Act shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Board of Governors of the Federal Reserve System.

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

Whenever the laws of a State require corporations acting in a fiduciary capacity, to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities

so deposited shall be held for the protection of private or court trusts, as provided by the State law.

National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement.

National banks shall have power to execute such bond when so required by the laws of the State.

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

In passing upon applications for permission to exercise the powers enumerated in this subsection, the Board of Governors of the Federal Reserve System may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly: *Provided*, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

Any national banking association desiring to surrender its right to exercise the powers granted under this subsection, in order to relieve itself from the necessity of complying with the requirements of this subsection, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the Board of Governors of the Federal Reserve System a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such a resolution, the Board of Governors of the Federal Reserve System, after satisfying itself that such bank has been relieved in accordance with State law of all duties as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or other fiduciary, under court, private, or other appointments previously accepted under authority of this subsection, may, in its discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this subsection. Upon the issuance of such a certificate by the Board of Governors of the Federal Reserve System, such bank (1) shall no longer be subject to the provisions

of this subsection or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (3) shall not exercise thereafter any of the powers granted by this subsection without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this subsection. The Board of Governors of the Federal Reserve System is authorized and empowered to promulgate such regulations as it may deem necessary to enforce compliance with the provisions of this subsection and the proper exercise of the powers granted therein.

Sections 1 and 3 of the Act of Congress approved November 7, 1918, as amended by the Acts of Congress approved February 25, 1927, June 16, 1933, and August 23, 1935, provide in part as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That any two or more national banking associations located within the same State, county, city, town, or village may, with the approval of the Comptroller of the Currency, consolidate into one association under the charter of either existing banks, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association owning at least two-thirds of its capital stock outstanding, * * *.*

* * * * *

Sec. 3. That any bank incorporated under the laws of any State, or any bank incorporated in the District of Columbia, may be consolidated with a national banking association located in the same State, county, city, town, or village under the charter of such national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and which agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where the same is organized so require, * * *. Upon such a consolidation, or upon a consolidation of two or more national banking associations under section 1 of this Act, the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and the consolidated association shall be deemed to be the same corporation as each of the constituent institutions. All the rights, franchises, and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and

chosés in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation: *Provided, however,* That where any such constituent institution at the time of such consolidation was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or in any other fiduciary capacity, the consolidated national banking association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such constituent corporation prior to the consolidation, and nothing herein contained shall be construed to impair in any manner the right of any court to remove such a consolidated national banking association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any such consolidated association be removed solely because of the fact that it is a national banking association. * * *

The Act of Congress approved May 1, 1886, provides in part as follows:

Sec. 2. That any national banking association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

Sec. 3. That all debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

Sec. 4. That nothing in this act contained shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law in which said association may be or become a party or interested.

A STATEMENT OF PRINCIPLES OF TRUST INSTITUTIONS

This statement was adopted by the Executive Committee of the Trust Division, American Bankers Association on April 10, 1933, and approved by the Executive Council of the American Bankers Association on April 11, 1933.

FOREWORD

This Statement of Principles has been formulated in order that the fundamental principles of institutions engaged in trust business may be restated and thereby become better understood and recognized by the public, as well as by trust institutions, themselves, and in order that it may serve as a guide for trust institutions.

In the conduct of their business trust institutions are governed by the cardinal principle that is common to all fiduciary relationships—namely, fidelity. Policies predicated upon this principle have for their objective its expression in terms of safety, good management, and personal service. Practices developed under these policies are designed to promote efficiency in administration and operation.

The fact that the services performed by trust institutions have become an integral part of the social and economic structure of the United States makes the principles of such institutions a matter of public interest.

ARTICLE I

DEFINITION OF TERMS

Section 1. Trust Institutions.—Trust institutions are corporations engaged in trust business under authority of law. They embrace not only trust companies that are engaged in trust business exclusively but also trust departments of other corporations.

Section 2. Trust Business.—Trust business is the business of settling estates, administering trusts and performing agencies in all appropriate cases for individuals; partnerships; associations; business corporations; public, educational, social, recreational, and charitable institutions; and units of government. It is advisable that a trust institution should limit the functions of its trust department to such services.

ARTICLE II

ACCEPTANCE OF TRUST BUSINESS

A trust institution is under no obligation, either moral or legal, to accept all business that is offered.

Section 1. Personal Trust Business.—With respect to the acceptance of personal trust business the two determining factors are these: Is trust service needed, and can the service be rendered properly? In personal trusts and agencies, the relationship is private, and the trust institution is responsible to those only who have or may have a financial interest in the account.

Section 2. Corporate Trust Business.—In considering the acceptance of a corporate trust or agency the trust institution should be satisfied that the company concerned is in good standing and that the enterprise is of a proper nature.

ARTICLE III

ADMINISTRATION OF TRUST BUSINESS

Section 1. Personal Trusts.—In the administration of its personal trust business, a trust institution should strive at all times to render unexceptionable business and financial service, but it should also be careful to render equally good personal service to beneficiaries. The first duty of a trust institution is to carry out the wishes of the creator of a trust as expressed in the trust instrument. Sympathetic, tactful, personal relationships with immediate beneficiaries are essential to the performance of this duty, keeping in mind also the interests of ultimate beneficiaries. It should be the policy of trust institutions that all personal trusts should be under the direct supervision of and that beneficiaries should be brought into direct contact with the administrative or senior officers of the trust department.

Section 2. Confidential Relationships.—Personal trust service is of a confidential nature and the confidences reposed in a trust department by a customer should never be revealed except when required by law.

Section 3. Fundamental Duties of Trustees.—It is the duty of a trustee to administer a trust solely in the interest of the beneficiaries without permitting the intrusion of interests of the trustee or third parties that may in any way conflict with the interests of the trust; to keep and render accurate accounts with respect to the administration of the trust; to acquaint the beneficiaries with all material facts in connection with the trust; and, in administering the trust, to exercise the care a prudent man familiar with such matters would exercise as trustee of the property of others, adhering to the rule that the trustee is primarily a conservator.

Section 4. Corporate Trust Business.—In the administration of corporate trusts and agencies the trust institution should render the same fine quality of service as it renders in the administration of personal trusts and agencies. Promptness, accuracy, and protection are fundamental requirements of efficient corporate trust service. The terms of the trust instrument should be carried out with scrupulous care and with particular attention to the duties imposed therein upon the trustee for the protection of the security-holders.

ARTICLE IV

OPERATION OF TRUST DEPARTMENTS

Section 1. Separation of Trust Properties.—The properties of each trust should be kept separate from those of all other trusts and separate also from the properties of the trust institution itself.

Section 2. Investment of Trust Funds.—The investment function of a trustee is care and management of property, not mere safekeeping at one extreme or speculation at the other. A trust institution should devote to its trust investments all the care and skill that it has or can reasonably acquire. The responsibility for the investment of trust funds should not be reposed in an individual officer or employee of a trust department. All investments should be made, retained or sold only upon the authority of an investment committee composed of capable and experienced officers or directors of the institution.

When the trust instrument definitely states the investment powers

of the trustee, the terms of the instrument must be followed faithfully. If it should become unlawful or impossible or against public policy to follow literally the terms of the trust instrument, the trustee should promptly seek the guidance of the court about varying or interpreting the terms of the instrument and should not act on its own responsibility in this respect except in the face of an emergency, when the guidance of the court beforehand could not be obtained. If the trust instrument is silent about trust investments or if it expressly leaves the selection and retention of trust investments to the judgment and discretion of the trustee, the latter should be governed by considerations of the safety of principal and dependability of income and not by hope or expectation of unusual gain through speculation. However, a trustee should not be content with safety of principal alone to the disregard of the reasonable income requirements of the beneficiaries.

It is a fundamental principle that a trustee should not have any personal financial interest, direct or indirect, in the trust investments, bought for or sold to the trusts of which it is trustee, and that it should not purchase for itself any securities or other property from any of its trusts. Accordingly, it follows that a trust institution should not buy for or sell to its estates or trusts any securities or other property in which it, or its affiliate, has any personal financial interest, and should not purchase for itself, or its affiliate, any securities or other property from its estates or trusts.

ARTICLE V

COMPENSATION FOR TRUST SERVICE

Section 1.—A trust institution is entitled to reasonable compensation for its services. Compensation should be determined on the basis of the cost of the service rendered and the responsibilities assumed. Minimum fees in any community for trust services should be uniform and applied uniformly and impartially to all customers alike.

ARTICLE VI

PROMOTIONAL EFFORT

Section 1. Advertising.—A trust institution has the same right as any other business enterprise to advertise its trust services in appropriate ways. Its advertisements should be dignified and not overstate or overemphasize the qualifications of the trust institutions. There should be no implication that legal services will be rendered. There should be no reflection, expressed or implied, upon other trust institutions or individuals, and the advertisements of all trust institutions should be mutually helpful.

Section 2. Personal Representation.—The propriety of having personal representatives of trust departments is based upon the same principle as that of advertising. Trust business is so individual and distinctive that the customer cannot always obtain from printed matter all he wishes to know about the protection and management the trust institution will give his estate and the services it will render his beneficiaries.

Section 3. New Trust Department.—A corporation should not enter the trust field except with a full appreciation of the responsibilities

involved. A new trust department should be established only if there is enough potential trust business within the trade area of the institution to justify the proper personnel and equipment.

Section 4. Entering Corporate Trust Field.—Since the need for trust and agency services to corporations, outside of the centers of population, is much more limited than is that of trust and agency services to individuals, a trust institution should hesitate to enter the corporate trust or agency field unless an actual demand for such services is evident, and the institution is specially equipped to render such service.

ARTICLE VII

RELATIONSHIPS

Section 1. With Public.—Although a trust department is a distinctly private institution in its relations with its customers, it is affected with a public interest in its relations with the community. In its relations with the public a trust institution should be ready and willing to give full information about its own financial responsibility, its staff and equipment, and the safeguards thrown around trust business.

Section 2. With Bar.—Attorneys-at-law constitute a professional group that perform essential functions in relation to trust business, and have a community of interest with trust institutions in the common end of service to the public. The maintenance of harmonious relations between trust institutions and members of the bar is in the best interests of both, and of the public as well. It is a fundamental principle of this relationship that trust institutions should not engage in the practice of law.

Section 3. With Life Underwriters.—Life underwriters also constitute a group having a community of interest with trust institutions in the common purpose of public service. Cooperation between trust institutions and life underwriters is productive of the best mutual service to the public. It is a principle of this cooperation that trust institutions should not engage in the business of selling life insurance.