

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 5055]
July 7, 1961]

**AMENDED REGULATION F
Trust Powers of National Banks**

*To All Banks and Trust Companies
in the Second Federal Reserve District:*

Enclosed is a copy of Regulation F of the Board of Governors of the Federal Reserve System, as amended effective May 18, 1961. The amended regulation incorporates the outstanding amendment, effective June 13, 1955, and an amendment, effective May 18, 1961, to the provisions of Section 12, Custody of Trust Securities and Investments. The latter amendment permits national banks to earmark trust securities and investments for vault custody purposes as an alternate method of identifying the securities of separate trusts pursuant to the requirements of Section 12. In addition, the amended regulation has been reprinted to conform with the style of the Code of Federal Regulations.

Additional copies of the enclosure will be furnished upon request.

ALFRED HAYES,
President.

**BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM**

TRUST POWERS OF NATIONAL BANKS



REGULATION F

(12 CFR 206)

As amended effective May 18, 1961



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

(12 CFR 206)

As amended effective May 18, 1961

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 206.1—APPLICATIONS

(a) A national bank desiring to exercise any or all of the powers authorized by section 11(k) of the Federal Reserve Act, as amended (40 Stat. 968, 46 Stat. 814, 49 Stat. 722; 12 U.S.C. 248(k)), 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 applications should be made on Form 61b.

(b) 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.

* The text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 206; cited as 12 CFR 206.

(c) 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 206.2—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 (40 Stat. 968, 46 Stat. 814, 49 Stat. 722; 12 U.S.C. 248(k)), 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 206.3—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, as amended (40

Stat. 1043, 44 Stat. 1225, 48 Stat. 190, 49 Stat. 718, 719; 12 U.S.C. 33, 34, 34a), 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 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 206.4—CONSOLIDATION OF STATE BANK WITH NATIONAL BANK

Section 3 of the Act of Congress approved November 7, 1918, as amended (44 Stat. 1225, 48 Stat. 190, 49 Stat. 719; 12 U.S.C. 34a), 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 206.5—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 (24 Stat. 18; 12 U.S.C. 30, 31, 32), 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.

SECTION 206.6—TRUST DEPARTMENT 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 trusts shall be approved by the board of directors or a committee appointed by such board, and the closing out or relinquishment of all trusts shall be approved or ratified by the board of directors or a committee appointed by such board; and such committee or committees shall be composed of capable and experienced officers or directors of the bank. 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 experi-

enced officers or directors of the bank.⁴ 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 bylaws 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.⁵

⁴ It is contemplated that there shall be a committee the members of which shall have a continuity of responsibility for the discharge of the duties of the committee. However, alternates appointed by the board of directors may serve in place of regular members of the committee who are unable to serve on account of vacations, illness, or other good and sufficient reasons if the minutes of the committee show the reason for the service of such alternate in place of the regular member.

⁵ The statement of principles of trust institutions approved by the Executive Council of the American Bankers Association is commended to banks operating trust departments.

SECTION 206.7—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 206.8—EXAMINATIONS OF TRUST DEPARTMENT

(a) In addition to examinations by examiners appointed by the Comptroller of the Currency⁶ 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 disposing of them has been made in accordance with section 206.6(c);

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

⁶ Section 11(k) of the Federal Reserve Act, as amended by the Banking Act of 1935, approved August 23, 1935 (49 Stat. 722; 12 U.S.C. 248(k)), 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.

(b) 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 System⁷ 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 206.9—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 as "investment securities" pursuant to section 5136 of the Revised

⁷ 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.

Statutes of the United States, as amended ⁸ (48 Stat. 184, 49 Stat. 709; 12 U.S.C. 24).

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.⁹

SECTION 206.10—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 invest-

⁸ 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.

⁹ Section 11(k) of the Federal Reserve Act, as amended (40 Stat. 969, 12 U.S.C. 248(k)), 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 paragraph 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 paragraph 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.

ments 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, 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 investment of trust¹⁰ funds.**—Funds received or held by a national bank as fiduciary shall not be invested collectively¹¹ except that (1) such collective investments may be made in accordance with § 206.17, and (2) funds of a trust which forms part of a pension, profit-sharing, or stock bonus plan of an employer for the exclusive benefit of his employees or their beneficiaries and which is exempt from Federal incomes taxes under the Internal Revenue Code may be invested collectively with funds of other such pension, profit-sharing, or stock bonus plan trusts if such collective investment is specifically authorized by the instrument creating the trust or by court order.^{11a}

SECTION 206.11—PURCHASE OR SALE OF TRUST ASSETS TO OR FROM TRUSTEE BANK OR ITS DIRECTORS, OFFICERS OR EMPLOYEES¹²

(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

¹⁰ Unless the context otherwise indicates, the term "trust," as used in this section or in any other part of this regulation, refers to any fiduciary relationship which a national bank is authorized to enter into under the provisions of section 11(k) of the Federal Reserve Act.

¹¹ This does not prevent the bank from investing the funds of several trusts in a single real estate loan if the bank owns no participation in the loan and has no interest therein except in its capacity as fiduciary.

^{11a} Section 584 of the Internal Revenue Code of 1954 provides that a common trust fund maintained in conformity with rules and regulations of the Board of Governors of the Federal Reserve System "pertaining to the collective investment of trust funds by national banks" and meeting certain other requirements shall not be subject to Federal income taxation. The rules and regulations of the Board of Governors for the purposes of section 584 are contained solely in § 206.17; and the permission contained in paragraph (c) (2) of § 206.10 is not intended to confer exemption from Federal income taxation under section 584.

¹² The requirements of this section shall not be deemed to prohibit the making of any investments or the carrying out of any transactions which are expressly required by the instrument creating the trust or are specifically authorized by court order.

or its directors, officers, or employees, or their interest,¹³ or in stock or obligations of, or property acquired from, affiliates of the bank.

(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,¹³ 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 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 206.12—CUSTODY OF TRUST SECURITIES AND INVESTMENTS

(a) The securities and investments of each trust shall be kept separate from the properties of the bank and 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.

(b) The securities and investments of each trust shall be either—

- (1) Kept separate from those of all other trusts,¹⁴ or
- (2) Earmarked in a manner that adequately identifies the trust to which the particular security belongs. In such case, the records of the trust department of the bank shall contain a full description, including bond and certificate numbers, of the securities so held.

¹³ Under recognized principles of sound practice regarding the handling of trust assets, a trustee or other fiduciary should not have any interest, direct or indirect, in the assets of a trust except as a fiduciary; and the requirements of this section contemplate that the national bank will not invest trust funds in the stock or obligations of, or property acquired from 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 and that the national bank will not sell or transfer trust assets to any organization in which the 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 selling or transferring trust assets.

¹⁴ Except as provided in § 206.10 (c) and § 206.17.

SECTION 206.13—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 206.14—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, 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 206.15—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 206.16—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 certificates previously issued to such national bank by the Board under the provisions of §§ 206.3, 206.5, 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 paragraph (d) of this section, the Board will require any national bank which desires to surrender its right to exercise trust powers, and which has the words “trust com-

pany" 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 paragraph (a) of this section 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 paragraph (a) of this section.

(c) **Examination of trust department.**—Upon receipt of the documents referred to in paragraph (a) of this section, 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 (40 Stat. 968, as amended; 12 U.S.C. 248(k)), 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 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 paragraph.

(d) **Certificate of Board of Governors of the Federal Reserve System.**—If, upon the basis of the examination referred to in paragraph (c), of this section, 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.¹⁵

SECTION 206.17—COMMON TRUST FUNDS

(a) **In general.**—(1) Funds received or held by a national bank as fiduciary may be invested collectively in any Common Trust Fund established and maintained in accordance with the provisions of this section whenever the laws of the State in which the national bank is located authorize or permit such investments by State banks, trust companies, or other corporations which compete with national banks: *Provided, however,* That funds shall not be invested in a Common Trust Fund of the type provided for in paragraph (d) of this section unless such investments are specifically authorized by the State statutes.

(2) As used in this part the term "Common Trust Fund" means a fund maintained by a national bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, or guardian.¹⁶

(3) The purpose of this section is to permit the use of Common Trust Funds, as defined in section 584 of the Internal Revenue Code, for the investment of funds held for true fiduciary purposes; and the operation of such Common Trust Funds as investment trusts for other than strictly fiduciary purposes is hereby prohibited. No bank administering a Common Trust Fund shall issue any document evidencing a direct or indirect interest in such Common Trust Fund in any form which purports to be negotiable or assignable. The trust investment committee of a bank operating a Common Trust Fund shall not permit any funds of any trust to be invested in a Common Trust Fund

¹⁵ Section 11(k) of the Federal Reserve Act (46 Stat. 815, 12 U.S.C. 248(k)) 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."

¹⁶ As used in this part the term "guardian" means guardian or committee of the estate of an infant, incompetent, or absentee, by whatever name known in the State in which a particular national bank is located.

if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes. A bank administering a Common Trust Fund shall not, in soliciting business or otherwise, publish or make representations which are inconsistent with this paragraph or the other provisions of this part and, subject to the applicable requirements of the laws of any State, shall not advertise or publicize the earnings realized on any Common Trust Fund or the value of the assets thereof.

(4) Common Trust Funds administered under this section shall be subject to the following requirements:

(i) Assets in a Common Trust Fund shall be considered as assets held by the bank as fiduciary;

(ii) A bank administering a Common Trust Fund shall not invest any of its own funds in such Common Trust Fund and if a bank, because of a creditor relationship or any other reason, acquires any interest in a participation in a Common Trust Fund under its administration the participation shall be withdrawn on the first date on which such withdrawal can be effected in accordance with the provisions of this section;

(iii) A bank administering a Common Trust Fund shall not have any interest¹⁷ in the assets held in such Common Trust Fund, other than in its capacity as fiduciary, except to the extent permitted for a temporary period as provided in subdivision (ii) of this subparagraph.

(b) Common Trust Funds for investment of small amounts.—Subject to all other provisions of this part except paragraphs (c) and (d) of this section, cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage may be invested, with the approval of the trust investment committee, in participations in a Common Trust Fund, provided the total investment of the funds of any one trust in one or more such Common Trust Funds shall not exceed \$1,200.

(c) Common Trust Funds for general investment.—Subject to all other provisions of this part except paragraphs (b) and (d) of this section, funds received or held by a bank in its capacity as trustee, executor, administrator, or guardian may be invested in participa-

¹⁷ A bank shall not be deemed to have an interest in assets in which collective investments are made merely because of the fact that the bank owns in its own right other stocks, or bonds or other obligations of a person, firm, or corporation, the stocks or bonds or other obligations of which are among the assets of a Common Trust Fund.

tions in a Common Trust Fund administered pursuant to the provisions of this paragraph. All participations in such a Common Trust Fund shall be on the basis of a proportionate interest in all of the assets of the Common Trust Fund.

(1) *Common Trust Fund to be operated under written plan.*— Each Common Trust Fund administered by a bank shall be established and maintained in accordance with a written plan (referred to here in as the Plan) approved by a resolution of the bank's board of directors and approved in writing by competent legal counsel. The Plan shall provide that the Common Trust Fund shall be administered in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks, and shall contain full and detailed provisions not inconsistent with the provisions of such rules and regulations as to the manner in which the Common Trust Fund is to be operated, including provisions relating to the investment powers of the bank with respect to the Common Trust Fund, the allocation of income, profits and losses, the terms and conditions governing the admission or withdrawal of participations in the Common Trust Fund, the auditing and settlement of accounts of the bank with respect to the Common Trust Fund, the basis and method of valuing assets in the Common Trust Fund, the basis upon which the Common Trust Fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the Common Trust Fund. A copy of the Plan shall be available at the principle office of the bank for inspection, during all banking hours, to any person having an interest in a trust any funds of which are invested in a participation in the Common Trust Fund; and upon reasonable request a copy of the Plan shall be furnished to such person.

(2) *Trust investment committee to approve participation.*— No funds of a trust shall be invested in a participation in a Common Trust Fund without the approval of the trust investment committee. Before permitting any funds of any trust to be invested in a participation in a Common Trust Fund, the trust investment committee shall review the investments comprising the Common Trust Fund; and, if it finds that any such investment is one in which funds of such trust might not

lawfully be invested at that time, funds of such trust shall not be invested in a participation in such Common Trust Fund.

At the time of making the first investment of funds of a trust in any Common Trust Fund, the bank shall send a notice of such investment to each person to whom a regular periodic accounting ordinarily would be rendered, except that such notices need not be sent to a court unless required by the court, and except that such notices need not be sent where the trust instrument specifically authorizes investments in Common Trust Funds.

(3) *Common Trust Fund to be audited annually.*—(i) A bank administering a Common Trust Fund shall, at least once during each period of 12 months, cause an audit to be made of the Common Trust Fund by auditors responsible only to the board of directors of the bank. The report of such audit shall include a list of the investments comprising the Common Trust Fund at the time of the audit which shall show the valuation placed on each item on such list by the trust investment committee of the bank as of the date of the audit, a statement of purchases, sales and any other investment changes and of income and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the Common Trust Fund.

(ii) The bank shall, without charge, send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the trusts participating in the Common Trust Fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request. Except as may be required by the applicable laws of any State, the bank shall not publish or authorize the publication of any such report or the information contained therein and each copy furnished to any person as herein provided must bear a statement to the effect that the publication of such copy or the information contained therein is unauthorized.

(4) *Value of assets to be determined periodically.*—Not less frequently than once during each period of three months the trust investment committee of a bank administering a Common Trust Fund shall determine the value of the assets in the Common Trust Fund as of the dates which the Plan provides for

the valuation of assets. No participation shall be admitted to or withdrawn from the Common Trust Fund except (i) on the basis of such valuation and (ii) as of such a valuation date. A reasonable period, not to exceed 7 days, following each valuation date may be used to make the computations necessary to determine the value of the Fund and of the participations therein. No participation shall be admitted to or withdrawn from the Common Trust Fund unless a written request for or notice of intention of taking such action shall have been entered in the records of the bank and approved by the trust investment committee, on or before the valuation date. No such request or notice may be canceled or countermanded after the valuation date.

(5) *Miscellaneous limitations.*—(i) No funds of any trust shall be invested in a participation in a Common Trust Fund if such investment would result in such trust having invested in the aggregate in the Common Trust Fund an amount in excess of 10 per cent of the value of the assets of the Common Trust Fund at the time of investment, as determined by the trust investment committee, or the sum of \$100,000, whichever is less. If the bank administers more than one Common Trust Fund under this subsection, no investment shall be made which would cause any one trust to have invested in the aggregate in all such Common Trust Funds an amount in excess of the sum of \$100,000; and, if the bank administers Funds under paragraphs (c) and (d) of this section, no investment shall be made which would cause any one trust to have invested in the aggregate in all such Funds an amount in excess of the sum of \$100,000. In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trusts shall be considered as one.

(ii) No investment for a Common Trust Fund shall be made in stocks, or bonds or other obligations of any one person, firm or corporation which would cause the total amount of investment in stocks, or bonds or other obligations issued or guaranteed by such person, firm, or corporation to exceed 10 per cent of the value of the Common Trust Fund, as determined by the trust investment committee, provided that this limitation shall not apply to investments in obligations of the United States or for the payment

of the principal and interest of which the faith and credit of the United States shall be pledged.

(iii) No investment for a Common Trust Fund shall be made in any one class of shares of stock of any one corporation which would cause the total number of such shares held by the Common Trust Fund to exceed 5 per cent of the number of such shares outstanding. If the bank administers more than one Common Trust Fund no investment shall be made which would cause the aggregate investment for all such Common Trust Funds in shares of stock of any one corporation to exceed such limitation.

(iv) Any bank administering a Common Trust Fund shall have the responsibility of maintaining in cash and readily marketable securities¹⁸ such part of the assets of the Common Trust Fund as shall be deemed by the Bank to be necessary to provide adequately for the needs of participating trusts and to prevent inequities between such trusts. In any event, prior to any admissions to or withdrawals from a Common Trust Fund, the trust investment committee shall determine what percentage of the value of the assets of a Common Trust Fund is composed of cash and readily marketable securities; and if such committee determines that, after effecting the admissions and withdrawals which are to be made pursuant to notice given as required in subparagraph (4) of this paragraph, less than 40 per cent of the value of the remaining assets of the Common Trust Fund would be composed of cash and readily marketable securities, no admissions to or withdrawals from the Common Trust Fund shall be permitted as of the valuation date upon which such determination is made, except that ratable distribution upon all participations is not prohibited.

(6) *Distribution upon withdrawal of participation.*—When participations are withdrawn from a Common Trust Fund distributions may be made in cash or ratably in kind, or partly in cash and partly ratably in kind, provided that all distributions as of any one valuation date shall be made on the same basis. Before any distribution in cash is made, the trust investment committee shall determine whether any investment remaining in the Common Trust Fund would be unlawful for one or more participating trusts if funds of such trusts were being invested at that time; and

¹⁸ A readily marketable security within the meaning of this section means a security which is a direct obligation of the United States or which is the subject of frequent dealings in ready markets with such frequent quotations of price as to make (a) the price easily and definitely ascertainable and (b) the security itself easy to realize upon by sale at any time.

no distribution shall be made in cash until any such unlawful investment shall have been eliminated from the Common Trust Fund either through sale, distribution in kind, or segregation as provided in subparagraph (7) of this paragraph.

(7) *Segregation of investments.*—If for any reason an investment is withdrawn in kind from a Common Trust Fund for the benefit of all trusts participating in the Common Trust Fund at the time of such withdrawal and such investment is not distributed ratably in kind it shall be segregated and administered or realized upon for the benefit ratably of all trusts participating in the Common Trust Fund at the time of withdrawal.

(8) *Management of Common Trust Fund and fees.*—A national bank administering a Common Trust Fund shall have the exclusive management thereof and shall not charge a fee for the management of the Common Trust Fund, or receive, either from the Common Trust Fund or from any trusts the funds of which are invested in participations therein, any additional fees, commissions, or compensations of any kind by reason of such participation. The bank shall not pay a fee, commission, or compensation out of the Common Trust Fund for management. Nothing in this subparagraph shall be construed as prohibiting a bank from reimbursing itself out of a Common Trust Fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating trusts if incurred in the separate administration of such participating trusts.

(9) *Effect of mistakes.*—No mistake made in good faith and in the exercise of due care in connection with the administration of a Common Trust Fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

(d) **Common Trust Funds composed principally of mortgages (Mortgage Investment Funds).**—Subject to all other provisions of this part except paragraphs (b) and (c) of this section,¹⁹ funds received or held by a bank in its capacity as trustee, executor, administrator, or guardian may be invested in participations in a Common Trust Fund administered pursuant to the provisions of this paragraph (referred to in this paragraph as a "Mortgage Investment

¹⁹ Note, however, that certain provisions of paragraph (c) of this section are incorporated in this paragraph (d) by reference.

Fund"). All admissions and withdrawals of participations in a Mortgage Investment Fund shall be made on the basis of the actual amount invested by each participant, and, except in final liquidation of a Mortgage Investment Fund, participants therein shall not have an interest in reserves accumulated or enhancement in the value of assets, except such as may be distributable as income.

(1) *Mortgage Investment Fund to be operated under written plan.*—Each Mortgage Investment Fund shall be subject to the provisions of paragraph (c) (1) of this section.

(2) *Trust investment committee to approve participation.*—
(i) No funds of a trust shall be invested in a participation in a Mortgage Investment Fund without the approval of the trust investment committee. Before permitting any funds of any trust to be invested in a participation in a Mortgage Investment Fund, the trust investment committee shall review the assets comprising the Mortgage Investment Fund; and, if it finds that the condition of the Mortgage Investment Fund is such that the funds of such trust might not lawfully be invested in a participation therein at that time, or that such investment would be contrary to the provisions of this paragraph, funds of such trust shall not be so invested.

(ii) At the time of making the first investment of funds of a trust in any Mortgage Investment Fund, the bank shall send a notice of such investments to each person to whom a regular periodic accounting ordinarily would be rendered, except that such notices need not be sent to a court unless required by the court, and except that such notices need not be sent where the trust instrument specifically authorizes investments in Mortgage Investment Funds.

(3) *Mortgage Investment Fund to be audited annually.*—Each Mortgage Investment Fund shall be subject to the provisions of paragraph (c) (3) of this section.

(4) *Value of assets to be determined periodically.*—(i) Not less frequently than once during each period of three months the trust investment committee of a bank administering a Mortgage Investment Fund shall determine the value of the assets in the Mortgage Investment Fund as of the dates which the Plan provides for the valuation of assets. No participation shall be admitted to or withdrawn from the Mortgage Investment Fund except as of such a valuation date. A reasonable period, not to exceed 7 days, following each valuation date may be used to

make the computations necessary to determine the value of the Fund and of the participations therein. No participation shall be admitted to or withdrawn from the Mortgage Investment Fund unless, on the basis of such valuation, the value of the assets of the Mortgage Investment Fund, exclusive of accrued income, is at least equal to the amount of the outstanding participations. No participation shall be admitted to or withdrawn from the Mortgage Investment Fund unless a written request for or notice of intention of taking such action shall have been entered in the records of the bank and approved by the trust investment committee, on or before the valuation date. No such request or notice may be canceled or countermanded after the valuation date.

(ii) The real estate securing each obligation contained in a Mortgage Investment Fund and any real estate contained in the Mortgage Investment Fund shall be appraised at least once every three years by two persons, one of whom shall not have participated in the last preceding appraisal of the particular property for the purposes of the Mortgage Investment Fund. Such persons shall be appointed by the bank's board of directors and shall, in the opinion of the board, be familiar with real estate values in the vicinity in which any such real estate is situated and qualified to make such appraisals. The persons appointed shall actually inspect such real estate and shall so certify in a written certificate of appraisal, which shall be filed and preserved in the bank's records.

(iii) The trust investment committee shall require more frequent appraisals of all properties or any particular property if such action is deemed by the committee to be necessary to enable it properly to discharge the duties imposed upon it by this paragraph.

(5) *Miscellaneous limitations.*—(i) No funds of any trust shall be invested in a participation in a Mortgage Investment Fund if such investment would result in such trust having invested in the aggregate in the Mortgage Investment Fund an amount in excess of the sum of \$1,200 or 2 per cent of the amount of the outstanding participations in the Mortgage Investment Fund, whichever is greater at the time of investment, or in any event in excess of the sum of \$10,000. If the bank administers more than one Mortgage Investment Fund, no investment shall be made which would cause any one trust to have invested in the

aggregate in all such Mortgage Investment Funds an amount in excess of the sum of \$10,000; and, if the bank administers Funds under both paragraphs (c) and (d) of this section, no investment shall be made which would cause any one trust to have invested in the aggregate in all such Funds an amount in excess of the sum of \$50,000. In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trust shall be considered as one.

(ii) No investment for a Mortgage Investment Fund shall be made in obligations of any one person, firm, or corporation which would cause the total amount of investment in obligations issued or guaranteed by such person, firm, or corporation to exceed 10 per cent of the amount of the outstanding participations in the Mortgage Investment Fund, provided that this limitation shall not apply to investments in obligations of the United States or for the payment of the principal and interest of which the faith and credit of the United States shall be pledged.

(iii) The unpaid balance of any obligation secured by real estate in which the funds of a Mortgage Investment Fund are invested shall not exceed \$10,000 on the date of the investment therein unless the aggregate amount of all outstanding participations in the Mortgage Investment Fund exceeds \$200,000, in which event the unpaid balance of such obligation shall not exceed 5 per cent of the amount of such outstanding participations or \$50,000, whichever amount is less.

(iv) Any bank administering a Mortgage Investment Fund shall have the responsibility of maintaining in cash such part of the assets of the Mortgage Investment Fund as shall be deemed by the banks to be necessary to provide adequately for the needs of participating trusts and to prevent inequities between such trusts. No investment of the moneys of a Mortgage Investment Fund shall be made if following such investment the cash balance, exclusive of collected income on hand, in the Mortgage Investment Fund would be less than an amount equal to 5 per cent of the total amount of all outstanding participations in the Mortgage Investment Fund. Unless upon computing the amount of the admissions and withdrawals which are to be made as of any valuation date pursuant to notice given as required in subparagraph (4) of this

paragraph, the trust investment committee determines that there will be sufficient cash in the Mortgage Investment Fund to permit all such withdrawals, no admissions to or withdrawals from the Mortgage Investment Fund shall be permitted as of such valuation date.

(v) Unless the trust investment committee determines that, after effecting the admissions and withdrawals which are to be made as of any valuation date pursuant to notice given as required in subparagraph (4) of this paragraph, the amount of investments of a Mortgage Investment Fund represented by assets in which moneys of the Mortgage Investment Fund could not then be invested under the provisions of subparagraph (8) of this paragraph will not exceed 10 per cent of the amount of the outstanding participations in the Mortgage Investment Fund, no admissions to or withdrawals from the Mortgage Investment Fund shall be permitted as of such valuation date.

(6) *Reserve account and distribution of income.*—(i) In each Mortgage Investment Fund the bank shall establish and maintain a reserve account as part of the principal thereof, to which, to the extent available, all realized losses shall be charged. Any realized gain in the value of assets of a Mortgage Investment Fund, other than income, shall be credited to such reserve account.

(ii) At least semiannually a bank administering a Mortgage Investment Fund shall determine the net income of the Mortgage Investment Fund during the period since the last determination thereof. At the close of each earning period, if the total amount contained in such reserve account is less than 10 per cent of the total amount of all outstanding participations in the Mortgage Investment Fund, the bank shall transfer to the reserve account, out of the net income of the Mortgage Investment Fund, such amount as the bank shall determine to be proper under the circumstances. The total amount so to be transferred to the reserve account during any year shall not be less than 10 per cent of the amount of the gross income of the Mortgage Investment Fund for such year or more than 1 per cent of the average of the total amounts of all outstanding participations in the Mortgage Investment Fund at the close of each earning period. No such transfers to the reserve account shall be made which will cause the amount contained therein to exceed 10 per cent of the amount of all outstanding participations.

(iii) The balance of the net income remaining after transferring the appropriate part thereof, if any, to the reserve account, shall thereupon be distributed to the owners of the outstanding participations in the Mortgage Investment Fund in proportion to the amounts of their participations and the period of time owned since the previous determination of net income.

(7) *Withdrawal of participation in a Mortgage Investment Fund.*—(i) Upon the withdrawal of a participation of any trust prior to termination and final liquidation of a Mortgage Investment Fund, such trust shall be entitled to be paid in cash the total amount of the funds of such trust invested in the participation, with net income thereon to the date of such payment, but such income shall not be paid until the amount thereof shall have been determined at the close of the current earning period.

(ii) Upon the termination and final liquidation of a Mortgage Investment Fund, all assets of the Mortgage Investment Fund shall be distributed among the owners of the participations at that time in proportion to the amounts thereof.

(8) *Investment of moneys of Mortgage Investment Funds.*—The moneys of a Mortgage Investment Fund shall be invested in:

(i) Obligations secured by real estate which, at the date of the investment, are legal for investment of trust funds under the laws of the State in which the bank is located and are insured by the Federal Housing Administrator, having been insured prior to the first day of July 1939, pursuant to the provisions of Title II of the National Housing Act, approved the 27th day of June 1934, as amended (48 Stat. 1247 et seq.; 12 U.S.C. 1707-1715c), or having been so insured thereafter, with like force and effect, pursuant to any revision or extension of the provisions of the said Act, or

(ii) Obligations secured by real estate which, at the date of the investment, are legal for investment of trust funds under the laws of the State in which the bank is located and are of the kind which might be acquired by a national bank under the provisions for making amortized loans contained in the third sentence of section 24 of the Federal Reserve Act (38 Stat. 273, as amended; 12 U.S.C. 371), or

(iii) (a) Obligations secured by real estate which, at the date of the investment, are legal for investment of trust funds under the laws of the State in which the bank is located,

which are payable within 20 years, and which either provide for semiannual payments reducing the principal thereof annually in an amount equal to at least 5 per cent of the amount of the principal on the date of investment, or provide for the amortization of the total unpaid principal amount of such mortgage on the date of investment by equal monthly payments during the term of such mortgage, such monthly payments being fixed at an amount which will include the interest due on such mortgage on the date of such payments and an additional amount to be applied in the reduction of the unpaid principal amount of such mortgage. In the case of a renewal or extension of any such obligation held by a Mortgage Investment Fund, the date upon which the Mortgage Investment Fund originally acquired the obligation shall be considered the date of investment.

(b) If in the judgment of the trust investment committee such obligations are not available for investment of moneys of a Mortgage Investment Fund, such moneys may be invested temporarily in obligations of the United States or of the State in which the bank is located or for the payment of the principal and interest of which the faith and credit of the United States or of such State shall be pledged, and which are legal for investment of trust funds under the laws of the State in which the bank is located. As soon as obligations secured by real estate in which the moneys of the Mortgage Investment Fund may be invested are available, such securities shall be disposed of and the proceeds invested in such obligations if this can be accomplished without disadvantage to the Mortgage Investment Fund.

(9) *Management of Mortgage Investment Fund and fees.*—Each Mortgage Investment Fund shall be subject to the provisions of paragraph (c) (8) of this section.

(10) *Effect of mistakes.*—Each Mortgage Investment Fund shall be subject to the provisions of paragraph (c) (9) of this section.

SECTION 206.18—BOARD FORMS

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

APPENDIX

STATUTORY PROVISIONS

Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)), 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, 2, and 3 of the Act of Congress approved November 7, 1918, as amended (12 U.S.C. 215, 215a, and 215b), provide in part as follows:

SEC. 1. That (a) any national banking association or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national

banking associations located in the same State under the charter of a national banking association. . . .

* * * * *

(e) The corporate existence of each of the consolidating banks or banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and such consolidated national banking association shall be deemed to be the same corporation as each bank or banking association participating in the consolidation. All rights, franchises, and interests of the individual consolidating banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the consolidated national banking association by virtue of such consolidation without any deed or other transfer. The consolidated national banking association, upon the consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy 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, and 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 one of the consolidating banks or banking associations at the time of consolidation, subject to the conditions hereinafter provided.

(f) Where any consolidating bank or banking association, at the time of the consolidation, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or 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 consolidating bank or banking association prior to the consolidation. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the 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 consolidated national banking association be re-

moved solely because of the fact that it is a national bank association.

* * * * *

Sec. 2. (a) One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association.

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(e) The corporate existence of each of the merging banks or banking associations participating in such merger shall be merged into and continued in the receiving association and such receiving association shall be deemed to be the same corporation as each bank or banking association participating in the merger. All rights, franchises, and interests of the individual merging banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy 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, and 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 one of the merging banks or banking associations at the time of the merger, subject to the conditions hereinafter provided.

(f) Where any merging bank or banking association, at the time of the merger, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or committee of estates of lunatics, or in any other fiduciary capacity, the receiving association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such merging bank or banking association prior to the merger. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the receiving 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 receiving association be removed solely because of the fact that it is a national banking association.

* * * * *

SEC. 3. As used in this Act, the term—

(1) "State bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia (except a national banking association located in the District of Columbia);

(2) "State" means the several States, the several Territories, Puerto Rico, the Virgin Islands, and the District of Columbia;

(3) "Comptroller" means the Comptroller of the Currency; and

(4) "Receiving association" means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge.

The Act of Congress approved May 1, 1886 (12 U.S.C. 30, 31, and 32), provides in part as follows:

SEC. 2. Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, with the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, 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 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. (As amended September 8, 1959.)

SEC. 3. 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. Nothing contained in sections 30 and 31 of this title 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.

There are printed below certain provisions of the Internal Revenue Code which are pertinent to some of the subject matter of this regulation.

SEC. 581. DEFINITION OF BANK.

For purposes of sections 582 and 584, the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k)), and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

SEC. 584. COMMON TRUST FUNDS.

(a) *Definitions.*—For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) *Taxation of Common Trust Funds.*—A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) *Income of Participants in Fund.*—

(1) *Inclusions in Taxable Income.*—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

REGULATION F

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) *Dividends and Partially Tax Exempt Interest.*—The proportionate share of each participant in the amount of dividends to which section 34 or section 116 applies, and in the amount of partially tax exempt interest on obligations described in section 35 or section 242, received by the common trust fund shall be considered for purposes of such sections as having been received by such participant. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) *Computation of Common Trust Fund Income.*—The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) the deduction provided by section 170(relating to char-

itable, etc., contributions and gifts) shall not be allowed; and
(4) the standard deduction provided in section 141 shall not be allowed.

(e) *Admission and Withdrawal.*—No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) *Different Taxable Years of Common Trust Fund and Participant.*—If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) *Net Operating Loss Deduction.*—The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary or his delegate.

SEC. 6032. RETURNS OF BANKS WITH RESPECT TO COMMON TRUST FUNDS.

Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062.

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. (Article V was amended June 8, 1956.)

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 objectives 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 interest 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 per-

sonal 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 for trust services should be applied uniformly and impartially to all its customers alike. (As amended June 8, 1956.)

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.