

Comptroller of the Currency, Treasury

§ 9.7

(c) A person seeking approval to organize a special-purpose national bank limited to fiduciary powers shall file an application with the OCC pursuant to 12 CFR 5.20.

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

§ 9.4 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

(b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank or its affiliates to perform services related to the exercise of its fiduciary powers, and any department of the bank or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* Pursuant to a written agreement, a national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity.

(d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.

§ 9.5 Policies and procedures.

A national bank exercising fiduciary powers shall adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the bank's:

- (a) Brokerage placement practices;
- (b) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;
- (c) Methods for preventing self-dealing and conflicts of interest;

(d) Selection and retention of legal counsel who is readily available to advise the bank and its fiduciary officers and employees on fiduciary matters; and

(e) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

§ 9.6 Review of fiduciary accounts.

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

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

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

§ 9.7 Multi-state fiduciary operations.

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

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

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

(b) *Serving customers in other states.* While acting in a fiduciary capacity in one state, a national bank may market its fiduciary services to, and act as fiduciary for, customers located in any state, and it may act as fiduciary for