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OCC Issues Final Rule on Fiduciary Activities of National Banks

WASHINGTON, D.C. -- The Office of the Comptroller of the Currency (OCC) published a final rule in today's [Federal Register](#) that revises its regulation governing fiduciary activities of national banks, including collective investment funds.

"This regulation completes the comprehensive review of our regulations that we began over three years ago," said Comptroller of the Currency Eugene A. Ludwig. "Our goal was to update and streamline our regulations and to eliminate unnecessary regulatory burden that does not contribute to the safety and soundness of national banks. That goal has now been achieved. I am proud of the efforts of so many dedicated people at the OCC who performed this review that will benefit national banks and the customers they serve."

Today's final rule on fiduciary activities marks the first time since 1963 that the regulation has been updated in its entirety. Today's rule accommodates the significant changes that have occurred in the fiduciary business of national banks since 1963, including banks' ability to do business on a multistate basis. The OCC has modified the rule's requirements to be more workable for both large, multistate fiduciary banking organizations and small banks that conduct fiduciary activities primarily on a local basis.

DEFINITION OF A FIDUCIARY ACTIVITY

The final rule provides a more specific identification of the fiduciary activities that are covered by the regulation. The fiduciary activities rules apply if the national bank serves in specified traditional capacities and is engaged in an activity where it exercises investment discretion. Additionally, the rules apply if a national bank provides investment advice for a fee. If a national bank does not have investment discretion, does not provide investment advice for a fee and does not serve in one of the specified traditional fiduciary capacities, such as trustee or executor of an estate, the regulation does not apply to that activity.

MODERN FIDUCIARY OPERATIONS

The final rule modernizes provisions relating to fiduciary operations. For example, the rule permits an audit committee of an affiliate to serve as a national bank's fiduciary audit committee. This change facilitates centralization of fiduciary audit functions and accompanying efficiencies within a bank holding company structure. The rule also allows a national bank to use personnel and facilities of affiliates to perform services related to the exercise of its fiduciary powers, and allows the bank to enter into agency agreements with other entities to purchase or sell services related to the exercise of its fiduciary powers. These changes allow banks to centralize

fiduciary-related services, or to outsource them, where appropriate. Moreover, the rule provides an exception to the collective investment fund "exclusive management" requirement to allow a bank to prudently delegate responsibilities to others. This exception is consistent with modern fiduciary principles, as evidenced in the prudent investor rule, and allows a bank to serve its customers more efficiently and effectively.

PLEDGING FOR FIDUCIARY DEPOSITS

When fiduciary cash is awaiting investment or distribution, a national bank may deposit the funds in its deposit account if the national bank pledges bank assets to secure the deposit. However, the previous regulation did not allow a national bank to pledge assets to secure a similar deposit by an affiliate bank such as a trust bank without deposits. The final rule permits a national bank to pledge assets to secure deposits of fiduciary cash awaiting investment or distribution with an affiliate when not prohibited by applicable law. This standard allows a state to prohibit this practice for all fiduciaries in the state, including national banks, yet gives a national bank flexibility for its fiduciary operations in states that do not choose to impose this prohibition. This change will facilitate more efficient fiduciary operations in multi-bank holding companies.

COLLECTIVE INVESTMENT FUNDS

Advertising

The final rule retains the existing OCC interpretation that national banks cannot advertise the performance of common trust funds except in connection with the advertisement of the general fiduciary services of the bank.

Management Fees

The previous regulation allowed a national bank administering a collective investment fund to charge a management fee if the fees charged do not exceed the total fees that the bank would have charged the fiduciary account if it had not invested assets of the account in the collective investment fund. The final rule allows a national bank to charge a fund management fee only if: (1) the fee is reasonable; (2) the fee is expressly permitted under applicable law (and the bank complies with disclosure requirements, if any) in the state in which the bank maintains the fund; and, (3) the amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the fiduciary account that would not have been provided to the account if it were not invested in the fund.

Limits on Investment and Participation

The final rule eliminates the previous limit on common trust funds, a type of collective investment fund, that limited one account to no more than 10 percent of a fund. The final rule also eliminates the limitation that one investment cannot represent more than 10 percent of the investments in a common trust fund.

The limits are unnecessary, the OCC noted, because state fiduciary law that obligates all banks to act in the best interests of their customers is adequate to ensure proper investment concentrations in common trust funds.

MULTISTATE FIDUCIARY OPERATIONS

The final rule also reflects the prior OCC legal interpretation that national bank fiduciary powers are the same for out-of-state national banks as for in-state banks. The rule's approach to multistate fiduciary activities recognizes that national banks will increasingly conduct fiduciary business in multiple states, and puts national banks on a par with competing fiduciaries in the states in which they operate.

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The OCC charters, regulates and supervises approximately 2,800 national banks and 66 federal branches and agencies of foreign banks in the U.S., accounting for more than half the nation's banking assets. Its mission is to ensure a safe, sound and competitive national banking system that supports the citizens, communities and economy of the United States.