

Kansas Administrative Regulations

Office of the State Bank Commissioner

Article 23.—Trust Supervision

17-23-1. Definitions.

For the purposes of article 23, the following definitions shall apply. (a) "Account" means the trust, estate or other fiduciary relationship that has been established with a bank or trust company.

(b) "Bank" means a corporation as defined in K.S.A. 9-701(a) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "bank" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(c) "Cash management vehicle" means any checking, savings or money market account that is used to accumulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) "Collective investment fund" means funds held by a bank or trust company as fiduciary and invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under the uniform transfers to minors act, K.S.A. 38-1701 et seq., and amendments thereto, or any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq. and amendments thereto, or pursuant to any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities that are subject to the transactions.

(h) "Fiduciary" means, unless otherwise defined in the operative agreement between the parties, a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and shall include a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, custodian under any state law substantially similar to the uniform transfers to minors act or the uniform gifts to minors act as published by the national conference of commissioners on uniform state laws, conservator of estates, assignee, receiver, managing agent, custodian or any other similar capacity in which the person or entity has investment authority or investment discretion.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments; to review investment decisions made by others; or to provide investment advice or counsel to others.

(l) "Investment discretion," with respect to an account, means that the bank or trust company is authorized to determine what securities or other property will be purchased or sold by or for the account.

(m) "Managing agent" means the fiduciary relationship assumed by the bank or trust company upon the creation of an account that names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(n) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, either in specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(o) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" shall not include any of the following:

- (1) A deposit or share account in a federally or state insured depository institution;
- (2) a loan participation;
- (3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;
- (4) currency;
- (5) any note, draft, bill of exchange, or bankers acceptance that has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;
- (6) units of a collective investment fund;
- (7) interests in a variable amount or a note as defined in paragraph (c)(2)(B) of K.A.R. 17-23-11; or
- (8) U.S. savings bonds.

(p) "Trust committee" means the board of directors or any committee charged, by the board of directors, with the responsibility for administration and supervision of a

bank trust department or the trust activities of a trust company. The "trust committee" may assign responsibility to other committees or individuals, as is necessary and appropriate.

(q) "Trust company" means those companies as defined in K.S.A. 9-701(b) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "trust company" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(r) "Trust department" means that group or groups of officers and employees of a bank or trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank or trust company, whether or not the group or groups are so named.

(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, 9-1602, 9-1603, 9-1605, 9-1606, 9-1607, 9-1608, 9-1609, 9-1610, 9-1611, 9-1612, 9-2101, 9-2102, 9-2104, 9-2105, 9-2106, K.S.A. 2000 Supp. 9-1604, 9-2107, as amended by L. 2001, ch. 5, §48, and 9-2111, K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1, and 9-2108, as amended by L. 2001, ch. 5, §49; effective Feb. 28, 1994; amended Jan. 18, 2002.)

***** Authenticated Kansas Administrative Regulation *****