

Kansas Administrative Regulations

Office of the State Bank Commissioner

Article 23.—Trust Supervision

17-23-11. Collective investment.

(a) Funds held by a bank or trust company as fiduciary may be 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 any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the American law institute; 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.

(b) Collective investment funds, as defined in subsection (d) of K.A.R. 17-23-1, shall be administered as follows.

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to herein as "the plan," which shall be approved by a resolution of the bank or trust company board of directors or by a committee authorized by the board.

(A) "The plan" shall contain appropriate provisions not inconsistent with the rules and regulations of the state bank commissioner as to the manner in which the fund is to be operated, including provisions relating to the following:

(i) The investment powers and a general statement of the investment policy of the bank or trust company with respect to the fund;

(ii) the allocation of income, profits, and losses;

(iii) fees and expenses that will be charged to the fund and to participating accounts;

(iv) the terms and conditions governing the admission or withdrawal of participations in the fund;

- (v) the auditing of accounts of the bank or trust company with respect to the fund;
- (vi) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;
- (vii) the expected frequency for income distribution to participating accounts;
- (viii) the minimum frequency for valuation of assets of the fund;
- (ix) the period following each such valuation date during which the valuation may be made, which in usual circumstances shall not exceed 10 business days;
- (x) the basis upon which the fund may be terminated; and
- (xi) any other matters that may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used.

(C) A copy of "the plan" shall be available at the principal office of the bank or trust company for inspection during all business hours, and upon request a copy of "the plan" shall be furnished to any person.

(2) Property held by a bank or trust company in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under any provision of the internal revenue code may be invested in collective investment funds, subject to the provisions herein contained pertaining to these funds, and may qualify for tax exemption pursuant to section 584 of the internal revenue code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of paragraph (a)(2) of this regulation if the fund qualifies for tax exemption under revenue ruling 56-267 and following rulings.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank or trust company as fiduciary in a participation in a collective investment fund is proper, the bank or trust company may consider the

collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) Each bank or trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets at least once every three months. However, in the case of a fund described in paragraph (a)(2) above that is invested primarily in real estate or other assets that are not readily marketable, the bank or trust company shall determine the value of the fund's assets at least once each year.

(A) Participation shall not be admitted to or withdrawn from the fund except according to the following:

- (i) On the basis of the valuation; and
- (ii) according to the valuation date.

(B) Participation shall not be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank or trust company and approved in the manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in real estate or other assets that are not readily marketable, the bank or trust company may require a prior notice period not to exceed one year, for withdrawals.

(5)(A) Each bank or trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank or trust company. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(B) Each bank or trust company administering a collective investment fund shall at least once during a period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the following:

- (i) The cost and current market value of each investment;

(ii) a statement for the period since the previous report showing purchases, with cost;

(iii) sales, with profit or loss and any other investment changes;

(iv) income and disbursements; and

(v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the bank or trust company shall make reference to the performance of funds other than those administered by the bank or trust company.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may also be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank or trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this regulation may be given publicity, solely in connection with the promotion of the fiduciary services of the bank or trust company.

(E) Except as provided in this regulation, the bank or trust company shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. However, all distributions on any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or

realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(A) A bank or trust company shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it shall not lend money to a fund, sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including time or savings deposits, of the bank or trust company or any of its affiliates. However, these deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this regulation, funds held by a bank or trust company as fiduciary for its own employees may be invested in a collective investment fund. A bank or trust company shall not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank or trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which the withdrawal can be effected. An unsecured advance to an account holding a participation shall not be deemed to constitute the acquisition of an interest by a bank or trust company until the time of the next valuation date arrives.

(B) Any bank or trust company administering a collective investment fund may purchase from the fund for its own account any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank or trust company elects to purchase the investment, it shall do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank or trust company administering the fund.

(10) A bank or trust company administering a collective investment fund shall have the exclusive management of it, except as prudence may allow delegation.

(A) The bank or trust company may charge a fee for the management of the collective investment fund if the fractional part of the fee proportionate to the interest of

each participant does not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations that would have been charged to the participant if no assets of the participant had been invested in participations in the fund.

(B) The bank or trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(11) A bank or trust company administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in this fund in any form.

(12) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank or trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(13) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies each of the following requirements.

(A) Investments shall be limited to bonds, notes, or other evidences of indebtedness payable on demand, including variable amount notes, or having a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations, and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a bank or trust company as fiduciary may be invested collectively, to the extent not prohibited by state law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of these companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund";

(2)(A) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(B) on a short-term basis in a variable amount note of a borrower of prime credit, if the note is maintained by the bank or trust company on its premises and is utilized by it only for investment of moneys held in fiduciary accounts.

The bank or trust company shall not participate in the loans or obligations authorized under paragraphs (c)(2)(A) and (B) and shall not have an interest in any investment therein except in its capacity as fiduciary;

(3) in a common trust fund maintained by the bank or trust company for the collective investment of cash balances received or held by a bank or trust company in its capacity as trustee, executor, administrator, or guardian, which the bank or trust company considers to be individually too small to be invested separately to advantage:

(A)(i) The total investment for such fund shall not exceed \$100,000;

(ii) the number of participating accounts shall be limited to 100; and

(iii) no participating account may have an interest in the fund in excess of \$10,000;

(B) in applying these limitations, if two or more accounts are created by the same person or persons and one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one;

(C) a fund shall not be established or operated under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation;

(4) in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation; or

(5) in any other manner that is approved in writing by the state bank commissioner.
(Authorized by K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

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