proposed § 9.18(c), are not subject to the requirements of § 9.18(b).

The proposal eliminates the requirement in current § 9.18(c)(2)(ii) that investments in variable-amount notes be made on a short-term basis, in accordance with the 1990 Proposal. The proposal also eliminates the requirement applicable to mini-funds (i.e., funds established for the collective investment of cash balances) that no participating account's interest in the fund exceed $10,000, again in accordance with the 1990 Proposal.[29] Moreover, the proposal expands the total amount of assets permitted in a mini-fund to $1,000,000.

Finally, the proposal provides an expeditious procedure for the review of new types of funds, in accordance with the 1990 Proposal. The purpose of this new procedure is to encourage innovation by improving the approval procedures for banks that wish to establish new types of funds.

Transfer Agents (Proposed § 9.20)

The proposal incorporates by means of cross-reference the SEC's rules prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1). Although section 17A(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(d)(1)) generally subjects all transfer agents to SEC rules, section 17A(c) (15 U.S.C. 78q–1(c)) provides that transfer agents shall register with their appropriate regulatory agencies. Current 12 CFR 9.20 sets forth procedural requirements for national banks that register as transfer agents that are virtually identical to the SEC's registration rules. Thus, the OCC does not need to maintain separate procedures, and the proposal simply incorporates the SEC's rule instead.

The proposal also clarifies that a national bank transfer agent must comply with rules adopted by the SEC pursuant to section 17A of the Securities Exchange Act (15 U.S.C. 78q–1) prescribing operational and reporting requirements that apply to all transfer agents (17 CFR 240.17Ac2–2, and 240.17Ad–1 through 240.17Ad–16).

The OCC's ''National Bank Transfer Agents' Guide'' provides additional guidance regarding the transfer agent activities of national banks, including the forms that national banks must file. The OCC sends the Guide to all national bank transfer agents, and to any person who requests it from the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Disciplinary Sanctions Imposed by Clearing Agencies (Proposed § 19.135)

The proposal relocates provisions concerning applications by national banks for stay or review of disciplinary sanctions imposed by registered clearing agencies from current §§ 9.21 and 9.22 to 12 CFR part 19, the OCC's rules of practice and procedure. Proposed § 19.135 incorporates by cross-reference the SEC's rules on this subject, which are virtually identical to current §§ 9.21 and 9.22.

Other Issues for Comment

The OCC has identified several other issues that relate to national banks' fiduciary activities. The OCC is not proposing specific regulatory text on these issues at this time, but invites comment on whether and how to address these issues in part 9.

Multistate Fiduciary Operations

As noted at the outset of this preamble discussion, bank organizational structures have changed significantly since 1913, when Congress first enacted the national bank fiduciary powers statute. Many bank holding companies currently conduct multistate fiduciary operations through separate bank or trust company subsidiaries chartered in different states. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) facilitates the consolidation of multistate fiduciary operations by permitting interstate bank mergers. Moreover, the ability to branch interstate may encourage some banks to expand the multistate fiduciary business they already have, and others to enter the fiduciary business on a multistate basis for the first time. However, the Interstate Act does not define the scope of a national bank's multistate fiduciary authority. For example, it does not address activities conducted at places other than interstate branches.

In a recent letter, the OCC analyzed the authority of a national bank to exercise fiduciary powers on an interstate basis under 12 U.S.C. 92a. See Letter from Julie L. Williams, Chief Counsel (December 8, 1995). The letter dealt with a proposal for a national bank to establish non-branch trust offices in many states and to conduct fiduciary business in each state. But the interstate considerations discussed below also apply to fiduciary activities conducted at interstate branches.

In brief, section 92a authorizes a national bank to conduct fiduciary activities but imposes no limitations on the places where, or the customers for whom, the bank may conduct those activities.[30] Since an office that conducts only fiduciary activities and does not engage in any of the so-called ''core banking functions'' in 12 U.S.C. 36(j) is not a branch for purposes of the McFadden Act (12 U.S.C. 36(c)), a bank may establish non-branch trust offices at any location, without regard to branching limitations. Thus, a national bank may conduct fiduciary activities at non-branch trust offices in states other than the state in which it has its main office. A national bank may also offer fiduciary services at its interstate branches.

The OCC believes that the effect of section 92a is that in any specific state, the extent of fiduciary powers is the same for out-of-state national banks as for in-state national banks and depends upon what the state permits for its own state institutions. A state may limit national banks from exercising any or all fiduciary powers in that state, but only if it also bars its own institutions from exercising the same powers. Therefore, a national bank with its main office in one state may exercise fiduciary powers in that state and other states, depending upon—with respect to each state—the powers each state allows its own institutions to exercise. In essence, with respect to national bank fiduciary powers in a given state, the OCC believes that section 92a applies the same standards to all national banks, regardless of where a national bank has its main office. Whether state administrative requirements connected

[29] Under current § 9.18(c)(3), a mini-fund may not exceed $100,000. Limiting participation in this fund to $10,000 is equivalent to limiting participation to 10 percent. Thus, eliminating the $10,000 limitation is consistent with eliminating the 10 percent participation limitation found in current § 9.18(b)(9).

[30] The basic authority for national banks to exercise fiduciary powers is found in 12 U.S.C. 92(a) and (b):

(a) Authority of the Comptroller of the Currency

The Comptroller of the Currency shall be authorized and empowered 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.

(b) Grant and exercise of powers deemed not in contravention of State or local law

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 section.