

§9.5 Policies and procedures.

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

(a) Brokerage placement practices, including:

(1) Selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to those persons;

(2) Acquisition of services or products, including research services, in return for brokerage commissions;

(3) Allocation of research or other services among accounts, including those that did not generate commissions to pay for that research or other services; and

(4) Disclosure of information concerning these brokerage placement policies and procedures to prospective and existing customers;

(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;

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

(f) Allocation to fiduciary accounts of any financial incentives the bank may receive for investing fiduciary funds in a particular investment; and

(g) Disclosure to beneficiaries and other interested parties of fees and expenses charged to fiduciary accounts.

§9.6 Review of assets of fiduciary accounts.

(a) *Individual account review*—(1) *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.

(2) *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, written review of all assets of the account to evaluate whether they are appropriate, individually and collectively, for the account.

(3) *Annual review.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of all assets of each account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

(b) *Annual review of assets by issuer.* At least once during every calendar year, and not later than 15 months after the last review, a bank shall conduct a written review of the investment merit of each asset in fiduciary accounts for which the bank has investment discretion, to the extent appropriate for that asset.

§9.8 Recordkeeping.

(a) *Documentation of accounts.* A national bank shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts, including any records required under 12 CFR part 12.

(b) *Retention of records.* A national bank shall retain all fiduciary records relating to an account for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* The bank shall ensure that its fiduciary records are separate and distinct from other records of the bank.

§9.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year and not later than 15 months after the last audit, a national bank shall perform, through its audit committee, a suitable audit of all of its fiduciary activities, unless the bank adopts a continuous audit system in accordance with paragraph (b) of this section. The bank shall note the results of the audit (including all actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* In lieu of performing annual audits under paragraph (a) of this section, a national bank may adopt a continuous audit system under which the bank performs, through its audit committee, a discrete audit of each fiduciary activity (*i.e.*, on an activity-by-activity basis) at intervals appropriate for that activity. Thus, a bank may audit certain fiduciary activities at intervals greater or less than one year, as appropriate. A bank that adopts a continuous audit system shall note the results of all discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the

board of directors at least once during each calendar year and not later than 15 months after the last audit report.

(c) *Audit committee.* A national bank's audit committee may consist of a committee of the bank's directors or an audit committee of an affiliate of the bank. However, the national bank's audit committee must not include:

(i) Any officers of the bank who participate significantly in the administration of the bank's fiduciary activities or;

(ii) Any members of a fiduciary committee of the bank.

§9.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* A national bank shall not allow funds of a fiduciary account that are awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* Unless prohibited by applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the bank. To the extent that the funds are not insured by the Federal Deposit Insurance Corporation, the bank shall secure them by setting aside collateral, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A national bank may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities that qualify as investment securities pursuant to 12 CFR part 1;

(iii) Readily marketable securities of the classes in which state banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under state law; and

(iv) Assets, including surety bonds, that qualify under applicable state law as appropriate security for deposits of fiduciary funds.

(c) *Affiliate deposits.* If consistent with applicable law, a national bank may deposit funds of a fiduciary account that are awaiting investment or