SECTION 7

TRUST POWERS

47-701.1 - ACTIVITIES NOT REQUIRING TRUST POWERS (Reference A.C.A. § 23-47-701)

A bank acting as escrow holder under an ordinary escrow contract, where the bank has no power to invest the escrowed funds, does not require trust powers. A state bank without trust powers may act as paying agent under a bond or note issue but it may not act as trustee thereunder.

47-701.2 - FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL RESERVE APPROVAL (Reference A.C.A. § 23-47-701)

A non-member insured bank may not adopt trust powers without Federal Deposit Insurance Corporation approval. A state member bank must obtain Federal Reserve approval.

47-701.3 - TITLE TO TRUST SECURITIES IN NAME OF A NOMINEE (Reference A.C.A. § 23-47-701)

A bank or trust company in the administration of a trust may place title to trust securities in the name of a nominee. If there is a co-trustee, consent must be obtained. But a bank or trust company in such a situation, will be absolutely responsible for any loss occasioned by the act of the nominee.

47-701.4 - COMMON TRUST FUND (Reference A.C.A. § 23-47-701)

(a) This concept permits the consolidation of the assets of the various trusts being administered by the bank into a common fund for investment purposes and to allocate to each trust a specific interest in this fund based on the amount of its contribution. An insured state chartered non-member bank or trust establishing a common trust fund should consult the Federal Deposit Insurance Corporation regarding its rules and regulations on such common trust funds.

(b) The Internal Revenue Code and the regulations and rulings promulgated thereunder contain certain provisions which exempt common trust funds from income taxation and instead impose the tax on each trust, whether or not the income is distributed. If there is a co-fiduciary, the bank establishing the common trust fund must secure the permission of the co-fiduciary prior to the investment of trust assets into the fund. If the bank merely acts as an investment agent in respect to the investments of one of its customers, such funds may not be placed in the common

trust fund. Any state bank establishing a common trust fund shall obtain approval of the Commissioner in advance of implementation. Such approval shall not be unreasonably withheld.

47-701.5 - INDIVIDUAL RETIREMENT ACCOUNT (Reference A.C.A. § 23-47-701)

Section 26 U.S.C. 408 et seq. establishes Individual Retirement Accounts. A bank that has trust powers may accept deposits into Individual Retirement Accounts and may, depending on the arrangement between the depositor and the bank, exercise discretion in the investment of such account. If a bank does not have trust powers, it may accept such deposits on a "custodial" arrangement only. However, reference should be made to the above cited federal law and the regulations and rulings promulgated thereunder for the administration of such accounts.

47-701.6 - KEOGH PLAN (Reference A.C.A. § 23-47-701)

A bank's activities as trustee or custodian under a Keogh Plan is governed by Section 26. U.S.C. 404(e).

47-705.1 - TRUST DEPOSITS AWAITING INVESTMENT OR DISTRIBUTION (Reference A.C.A. § 23-47-705)

All Trust Deposits awaiting investment or distribution which are determined to be eligible under A.C.A. § 28-69-206 for pledging of government securities to the deposit, may be secured by a blanket pledging of eligible securities to those eligible trust deposits subject to the following requirements:

(a) The total of the pledged securities must always exceed the total of the eligible trust deposits by ten percent (10%). Such trust deposits shall have a prior and preferred claim on said pledged securities.

(b) Any bank using blanket securities as collateral for eligible trust deposits must identify the securities being used and perfect a security interest in such securities for the benefit of the owners of the accounts for which the pledge is made.

(c) Trust deposits that are being collateralized must be designated in the trust department's records. The actual amount of collateralization need not be given. These records should be maintained current at all times within the bank's trust department.

(d) Funds held by a state bank as trustee which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each state bank exercising fiduciary powers shall adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term investments is obtained upon funds so held, consistent with the requirements of the governing instrument and local law. Such policies and procedures shall take into consideration all relevant factors, including but not limited to the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing such funds, and the anticipated need for the funds.

(e) Funds held in trust by a state bank as trustee awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in the commercial or savings or other department of the bank, provided that it shall first

set aside under control of the trust department as collateral security (i) direct obligations of the United States, (ii) other obligations fully guaranteed by the United States as to principal and interest, or (iii) general obligations of the State of Arkansas.

(f) The securities so deposited or securities substituted therefor as collateral shall at all times exceed the total of the eligible trust deposits by ten percent (10%), but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this section are met when qualifying assets of the bank are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

47-701.7 - BANK AS TRUSTEE; VOTING OF OWN SHARES (Reference A.C.A. § 23-47-701)

The trust department of a state bank is theoretically subject to the dominion of the board of directors; and the trust department conceivably might in some situations be called upon to vote the bank's own shares for proposals more calculated to benefit the individual directors than the bank. Under the National Banking Act (Section 12 U.S.C. 61) a national bank cannot vote its own shares in the election of directors of the bank unless under the terms of the trust the manner in which the shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted. Moreover, if the national bank has a co-trustee, the shares may be voted by the co-trustee. The above stated national bank rule shall be applicable with respect to voting any shares of the bank held by the trust department in the election of the bank's directors. On all other proposals, the trust department is urged to weigh carefully the issues presented and any conflicts of interest which are present before deciding whether to vote or how to vote the shares .

47-701.8 - TRUST POLICIES (Reference A.C.A. § 23-47-701)

All state banks exercising trust powers shall adopt a trust policy setting forth, at a minimum, trust department investment practices, including investments in the obligations of the bank and its affiliates, voting practices and procedures concerning the banks stock and the stock of any affiliates of the bank, and trust account administration policies and procedures.

FIDUCIARY POWERS OF STATE BANKS

47-701.9 - FIDUCIARY POWERS OF STATE BANKS (Reference A.C.A. § 23-47-701)

(a) Definitions. For the purposes of this regulation, the term:

"**Account**" means the trust, estate or other fiduciary relationship which has been established with a bank;

"**Custodian under a Uniform Gifts to Minors Act**" means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the America Law Institute and with respect to which the bank operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian.

"**Fiduciary**" means a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of incompetents, managing agent and any other similar capacity;

"**Fiduciary powers**" means the power to act in any fiduciary capacity as authorized by Arkansas state law or any applicable federal law;

"**Fiduciary records**" means all matters which are written, transcribed, recorded, received or otherwise come into possession of a bank and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of a bank;

"**Guardian**" means the guardian or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws;

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

"**Local law**" means the law of the state or other jurisdiction governing the fiduciary relationship;

"**Managing agent**" means the fiduciary relationship assumed by a bank upon the creation of an account which names the bank as agent and confers investment discretion upon the bank;

"**State bank**" means any bank, trust company, savings bank, or other banking institution, which is not a national bank and the principal office of which is located in the District of Columbia, any state, commonwealth, or territorial possession of the United States;

"**Trust department**" means that group or groups of officers and employees of a bank 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, whether or not the group or groups are so named;

(b) Adoption of Policies and Procedures with Respect to Brokerage Placement Practices.

Each state bank exercising investment discretion (as defined in Section 12 C.F.R. 12.2(c)) with respect to an account shall adopt and follow written policies and procedures intended to ensure

that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, such written policies and procedures should address, where appropriate,

(1) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons (including the factors considered in these determinations);

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

(3) the allocation of research or other services among accounts, including those which did not generate commissions to pay for such research or other services; and

(4) the need, in appropriate instances, to make disclosures concerning such policies and procedures to prospective and existing customers.

(c) Administration of Fiduciary Powers.

(1) (A) The board of directors is responsible for the proper exercise of fiduciary powers by the bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the bank's fiduciary powers as it may consider proper to assign to such directors, officers, employees or committees as it may designate.

(B) No fiduciary account shall be accepted without the prior approval of the board, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the bank has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account, where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. A written record shall be made of the approval of all purchases, sales and changes of trust assets.

(C) The board of directors shall name a Trust Committee consisting of at least three (3) directors, at least one of whom shall not be an officer of the bank, to be responsible for and supervise the activities of the trust department. The Trust Committee shall meet at least quarterly or more frequently if necessary and prudent to adequately supervise the activities of the department. The Trust Committee shall keep full minutes of its actions and make periodic reports thereof to the board.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every state bank exercising fiduciary powers shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the bank and its trust department.

(4) The trust department may utilize personnel and facilities of other departments of the bank, and other departments of the bank may utilize personnel and facilities of the trust department only to the extent not prohibited by law. Every state bank exercising fiduciary powers shall adopt written policies and procedures to ensure that the Federal and State securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that state bank trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(5) The Trust Committee shall review the examination reports of the trust department by supervisory agencies and record its action thereon in its minutes. Nothing herein is intended to prohibit the board of directors from acting as the Trust Committee, from designating additional officers to administer the operations of the trust department and defining their duties, or from appointing additional committees for the trust department operation and defining the duties of such committee.

(d) Books and Accounts.

(1) Every state bank exercising fiduciary powers shall keep its fiduciary records separate and distinct from other records of the bank. All fiduciary records shall be so kept and retained for such time as to enable the bank to furnish such information or reports with respect thereto as may be required by the State Bank Department. The fiduciary records shall contain full information relative to each account.

(2) Every such state bank shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(3) Solely for purposes of examination by the State Bank Department, a state bank shall retain the records required by this section for a period of three (3) years from the later of termination of the fiduciary account relationship to which the records relate or of litigation relating to such account, unless applicable law specifically prescribes a different period.

(e) Audit of Trust Department**.**

A committee of directors, exclusive of any active officers of the bank, shall at least once during each calendar year make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors and at such time shall ascertain whether the department has been administered in accordance with law, applicable regulations and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

(f) Investment of Funds Held as Fiduciary.

(1) Funds held by a state bank in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the bank, its directors or its officers a discretion in the matter, funds held pursuant to such

instrument shall be invested in any investment in which corporate fiduciaries may invest under local law.

(2) If, under local law, corporate fiduciaries appointed by a court are permitted to exercise a discretion in investments, or if a state bank acting as fiduciary under appointment by a court is vested with a discretion in investments by an order of such court, funds of such accounts may be invested in investments which are permitted by local law. Otherwise, a state bank acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the bank.

(3) The collective investment of funds received or held by a state bank as fiduciary is governed by subsection (n) of this regulation.

(4) As a part of each examination of the trust department of a state bank the State Bank Department will examine the investments held by such bank as fiduciary, including the investment of funds under the provisions of subsection (n) of this section, in order to determine whether such investments are in accordance with law, this regulation and sound fiduciary principles.

(g) Self-dealing.

(1) Unless lawfully authorized by the instrument creating the relationship or by court order or by local law, funds held by a state bank as fiduciary shall not be invested in stock or obligations of, or property acquired from, the bank or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the bank in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the bank or their directors, officers or employees.

(2) Property held by a state bank as fiduciary shall not be sold or transferred, by loan or otherwise, to the bank or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the bank in selling or transferring such property, or to affiliates of the bank or their directors, officers or employees, except:

(A) Where lawfully authorized by the instrument creating the relationship or by court order or by local law;

(B) In cases in which the bank has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors, provided that in all such cases the bank, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

(C) As is provided in subsection (b)(8)(B) of this regulation;

(D) Where required by the State Bank Department.

(3) Except as provided in (f) (2) of this regulation, funds held by a state bank as fiduciary shall not be invested by the purchase of stock or obligations of the bank or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law, provided that if the retention of stock or obligations of the bank or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(4) A state bank may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

(5) A state bank may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not prohibited by local law.

(6) A state bank may make a loan to an account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not prohibited by local law.

(h) Custody of Investments.

(1) The investments of each account shall be kept separate from the assets of the bank, and shall be placed in the joint custody or control of not less than two of the officers or employees of the bank designated for that purpose by the board of directors of the bank or by one or more officers designated by the board of directors of the bank; and all such officers and employees shall be adequately bonded. To the extent permitted by law, a state bank may permit the investments of a fiduciary account to be deposited elsewhere.

(2) The investments of each account shall be either:

(A) Kept separate from those of all other accounts, except as provided in subsection (n) of this regulation, or

(B) Adequately identified as the property of the relevant account.

(i) Deposit of Securities with State Authorities.

Whenever the local law requires corporations acting as fiduciary to deposit securities with the state authorities for the protection of private or court trusts, every state bank in that state authorized to exercise fiduciary powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state authorities. If the state authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Reserve Bank of the district in which such state bank is located, and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the state authorities.

(j) Compensation of Bank.

(1) If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, a state bank acting in such capacity may charge or deduct a reasonable compensation for its services. When the bank is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by local law.

(2) No state bank shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the bank in the administration of any account undertaken by it.

(k) Receivership or Voluntary Liquidation of Bank.

(1) Whenever a receiver is appointed for a state bank by the Commissioner, such receiver shall, pursuant to the instructions of the Commissioner and to the orders of the court having jurisdiction, proceed to close such accounts as can be closed promptly and transfer all other accounts to substitute fiduciaries.

(2) Whenever a state bank exercising fiduciary powers is placed in voluntary liquidation, the liquidating agent shall, in accordance with the local law, proceed at once to liquidate the affairs of the trust department as follows:

(A) All trust and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practical in accordance with the orders or instructions of such court;

(B) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

(l) Surrender or Revocation of Fiduciary Powers.

Any state bank which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the Commissioner a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Commissioner shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

COLLECTIVE INVESTMENT FUNDS

Collective Investment. (Common Trust Funds as in A.C.A. § 28-69-202)

(a) Where not in contravention of local law, funds held by a state bank as fiduciary may be invested collectively:

(1) In a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under a Uniform Gifts to Minors Act.

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

(b) Collective investment of funds or other property by state banks under paragraph a of this section (referred to in this paragraph as "collective investment funds") 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's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency and the State Bank Department as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided in paragraph (b)(15) of this section of this regulation, fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours and upon request a copy of the Plan shall be furnished to any person.

(2) Property held by a bank in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (1) or (2) of paragraph (a) of this section of this regulation, subject to the provisions herein contained pertaining to such 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 which are exempt from federal income taxation by reason of being described in Section 401 of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (2) of paragraph (a) of section this of this regulation if the fund qualifies for tax exemption under Revenue Ruling 81-100, and following rules.

(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 as fiduciary in a participation in a collective investment fund is proper, the bank may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is non-income producing.

(4) Not less frequently than once during each period of three (3) months, a bank 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. No participation shall be admitted to or withdrawn

from the fund except (i) on the basis of such valuation and (ii) as of such valuation date. No participation shall 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 and approved in such manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date. If a fund described in paragraph (a)(2) of this section of this regulation is to be invested in real estate or other assets which are not readily marketable, the bank may require a prior notice period not to exceed one (1) year, for withdrawals.

(5) (A) A bank administering a collective investment fund shall at least once during each period of twelve (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. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

(B) A bank administering a collective investment fund shall at least once during a period of twelve (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 cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and disbursements; and 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. No predictions or representations as to future results may be made. In addition, as to funds described in subparagraph (1) of paragraph (a) of this section of this regulation, neither the report nor any other publication of the bank shall make reference to the performance of funds other than those administered by the bank.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of such 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 such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank. 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 subparagraph (1) of paragraph (a) of this section of this regulation may be given publicity solely in connection with the promotion of the fiduciary services of the bank.

(E) Except as herein provided, the bank shall not advertise or publicize its collective investment fund(s) described in subparagraph (1) of paragraph (a) of this section 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, provided that all distributions as of 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 such withdrawal and such 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) No bank shall 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 may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates, provided that such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this section, funds held by a bank as fiduciary for its own employees may be invested in a collective investment fund. A bank may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

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

(9) Except in the case of collective investment funds described in paragraph (a)(2) of this section of this regulation:

(A) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of ten percent (10%) of the then market value of the fund, provided that in applying this limitation if two or more accounts are created by same person or persons and as much as one-half (½) of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one;

(B) No investment for a collective investment fund shall be made in stocks, bonds or other obligations of any one person, firm or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess of ten percent (10%) of the then market value of the fund, provided that this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest;

(C) A bank administering a collective investment fund shall maintain, in cash and readily marketable investments, such percentage of the assets of the fund as is necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

(10) 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 administering the fund.

(11) (A) A bank may (but shall not be required to) transfer up to five percent (5%) of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account, provided that no such transfers shall be made which would cause the amount in such account to exceed one percent (1%) of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(B) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

(12) A state bank administering a collective investment fund shall have the exclusive management thereof. The bank may charge a fee for the management of the collective investment fund provided that the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been invested in participations in the fund. The bank shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) No bank administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

(14) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

(15) Short-term investment funds established under paragraph (a) of this section 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 the following conditions:

(A) investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding ninety-one (91) days from the date of purchase. However, twenty percent (20%) 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 must be accrued on a straight-line basis;

(C) assets of the fund must be held until maturity under usual circumstances; and

(D) after effecting admissions and withdrawals, not less than twenty percent (20%) of the value of the remaining assets of the fund must 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 paragraph 1 of this regulation, funds or other property received or held by a state bank as fiduciary may be invested collectively, to the extent not prohibited by local 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 such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank 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, provided that such note shall be maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts, provided further, that the bank owns no participation in the loans or obligations authorized under (A) or (B) hereof, and has no interest in any investment therein except in its capacity as fiduciary.

(3) In a common trust fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage. The total investment for such fund must not exceed one hundred thousand dollars ($100,000); the number of participating accounts is limited to one hundred (100), and no participating account may have an interest in the fund in excess of ten thousand dollars ($10,000), provided that in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half (½) 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, and provided that no fund shall be established or operated under this subparagraph for the purpose of avoiding the provisions of paragraph (b) of this section 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, provided that such investment is not made under this subparagraph for the purpose of avoiding the provisions of paragraph (b) of this section of this regulation.

(5) In such other manner as shall be approved in writing by the State Bank Department.