

PROPOSED RULE

COLLECTIVE INVESTMENT FUNDS

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

- (a) Any common trust fund or collective investment authorized by Arkansas Code Annotated § 28-69-202 shall be established and maintained in accordance with 12 C.F.R. 9.18 as of January 1, 2019, and any subsequent amendments to 12 C.F.R. 9.18 thereafter.

~~(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~~
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~~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 (1/2) 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.~~