

**CHAPTER 15. TRUSTS**

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**Authority**

The provisions of this Chapter 15 issued under section 404 of the Banking Code of 1965 (7 P. S. § 404), unless otherwise noted.

**Source**

The provisions of this Chapter 15 adopted January 14, 1969, unless otherwise noted.

**Cross References**

This chapter cited in 10 Pa. Code § 9.4 (relating to rules governing commingling and pooling of IRA accounts).

**COLLECTIVE INVESTMENT FUNDS****§ 15.1. Definition of “institution”**

The word institution, when used in this chapter, means a bank and trust company, a trust company and, to the extent applicable, a savings bank.

**§ 15.2. Plan to be filed by institutions.**

(a) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to within this chapter as “the Plan”) which shall be approved by resolution of the board of directors of the institution and filed with the Department.

(b) For funds established under section 404(b)(i) of the Banking Code (7 P. S. § 404(b)(i)) and Regulation 9 of the Comptroller of the Currency, an institution shall submit to the Department a copy of the plan for approval.

(c) Collective investments of funds or other property by institutions under section 404(b)(ii) and (iii) of the Banking Code (7 P. S. § 404(b)(ii) and (iii)) shall be administered as provided in this chapter.

**Source**

The provisions of this § 15.2 amended January 10, 1986, effective January 11, 1986, 16 Pa.B. 128. Immediately preceding text appears at serial pages (1991) to (1992).

**Cross References**

This section cited in 10 Pa. Code § 15.3 (relating to contents of Plan).

**§ 15.3. Contents of Plan.**

The Plan filed by institutions in accordance with § 15.2 (relating to plan to be filed by institutions) shall contain provisions relating to the following:

- (1) Investment powers of the institution with respect to the fund.
- (2) Allocation of income, profits and losses.
- (3) Terms and conditions governing the admission or withdrawal of participations in the fund.
- (4) Basis and method of valuing assets in the fund.
- (5) Period following each valuation date during which the valuation may be made.
- (6) Basis upon which the fund may be terminated.
- (7) Auditing of accounts of the institution with respect to the fund.
- (8) Other matters as may be necessary to define clearly the rights of participants in the fund.

**§ 15.4. Public availability of Plan.**

A copy of the Plan shall be available at the principal office of the institution for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

**§ 15.5. Participation.**

- (a) Participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets.
- (b) The institution shall consider the fund as a whole when investing funds received or held by the institution as fiduciary in a participation in a collective investment fund, and the institution shall not be prohibited from making an investment of such funds because any particular asset is non-income producing.
- (c) At least annually, an institution administering a collective investment fund shall determine the value of the assets in the fund as of the dates set for the valuation of assets.
- (d) No participation shall be admitted to or withdrawn from the fund except on the basis of the valuation described in subsection (c). The valuation used as a basis for a participation admission or withdrawal shall be the most recent valuation.
- (e) 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 institution and approved in such manner as the board of directors shall prescribe. No such request or notice may be cancelled or countermanded after the valuation date.

**Source**

The provisions of this § 15.5 amended January 10, 1986, effective January 11, 1986, 16 Pa.B. 128. Immediately preceding text appears at serial pages (1992) and (1993).

**§ 15.6. Annual audit.**

(a) An institution administering a collective investment fund shall make an adequate audit of the fund at least once during every 12-month period. The auditors who perform this audit are responsible only to the board of directors of the institution.

(b) When such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the fund.

**Cross References**

This section cited in 10 Pa. Code § 15.7 (relating to annual financial report).

**§ 15.7. Annual financial report.**

(a) An institution administering a collective investment fund shall, at least once during each period of 12 months, prepare a financial report of the fund which shall be filed with the Department.

(b) The financial report shall be based upon the annual audit required by § 15.6 (relating to annual audit).

(c) The financial report shall contain the following:

(1) A list of the investments in the fund, showing the cost and current market value of each investment except as otherwise provided in § 15.13 (relating to short term investment funds).

(2) A statement for the period since the last report, showing purchases including costs.

(3) All sales, with profit and loss.

(4) All other investment changes.

(5) All income and disbursements.

(6) An appropriate notation as to any investment in default.

(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.

(e) The cost of printing and distribution of the financial report shall be borne by the institution.

**Source**

The provisions of this § 15.7 amended January 10, 1986, effective January 11, 1986, 16 Pa.B. 128. Immediately preceding text appears at serial pages (1993) and (1994).

**§ 15.8. Withdrawals.**

(a) 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.

(b) 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 fund at the time of withdrawal.

**§ 15.9. Fiduciary capacity of an institution.**

(a) An institution administering a collective investment fund shall not have any interest in such fund, other than its fiduciary capacity, but funds held by an institution as fiduciary for its own employees may be invested in such a fund.

(b) An institution administering a collective investment fund shall not make any loans on the security of a participation in such fund.

(c) If for any reason the institution acquires an interest in a participation in such fund, the participation shall be withdrawn on the first date on which such a withdrawal can be effected.

(d) An unsecured advance to an account holding a participation shall not be deemed to constitute the acquisition of an interest by the institution until the time of the next withdrawal.

(e) The institution may purchase for its own account from a collective investment fund any defaulted mortgage held by such fund. A purchase of such a mortgage may be made by the institution if its board of directors agrees that the cost of segregation of the mortgage would be greater than the difference between its market value and its principle amount plus interest and penalty charges due. If the institution elects to purchase a defaulted mortgage, it shall pay the market value or the sum of principal, interest and penalty charges, whichever is greater.

**§ 15.10. General investment procedures.**

Funds operating under section 404(b)(iii) of the Banking Code (7 P. S. § 404(b)(iii)) shall be subject to the following additional restrictions:

(1) No funds or other property shall be invested in a participation in a fund if, as result of such an investment, the participant would have an interest aggregating in excess of 10% of the then market value of the fund.

(2) If two or more accounts are created by the same person or persons, and as much as 50% of the income or principal of each account is payable or appli-

cable to the use of the same person or persons, such accounts shall be considered as one, and controlled by the limitation of subsection (a).

(3) 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 10% of the then market value of the fund. The limitation of 10% 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.

(4) Any institution administering a fund shall have the responsibility of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities between such participants.

(5) If, prior to any admissions to or withdrawals from a fund, the institution shall determine that, after effecting the admissions and withdrawals which are to be made, less than 40% of the value of the remaining assets of the collective investment fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be permitted as of the valuation date upon which such determination is made provided that ratable distribution upon all participations shall not be so prohibited in any case.

### § 15.11. Handling of mortgages.

(a) *Charges for service expenses.* Reasonable expenses incurred in servicing mortgages held by a fund may be charged against the income account of the fund and paid to servicing agents, including the institution administering the fund.

(b) *Reserve accounts.*

(1) An institution may, but shall not be required to, transfer up to 5.0% of the net income derived by a fund from mortgages held by such fund during any regular accounting period to a reserve account.

(2) No transfers to a reserve account shall be made which would cause the amount in such account to exceed 1.0% of the outstanding principal amount of all mortgages held in the fund.

(3) 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.

(4) 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 that amount so recovered.

**§ 15.12. Management provisions.**

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

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

**§ 15.13. Short-term investment funds.**

Short-term investment funds 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:

(1) Investments shall 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 91 days from the date of purchase. Twenty percent of the value of the fund may be invested in longer term obligations.

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

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

(4) After effecting admissions and withdrawals, not less than 20% 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.

**Source**

The provisions of this § 15.13 adopted January 10, 1986, effective January 11, 1986, 16 Pa.B. 128.

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