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CHAPTER 21.

BANKS AND CORPORATIONS DOING TRUST BUSINESS

ARTICLE 1.

GENERAL PROVISIONS

**SECTION 34‑21‑10.** Written approval from State Board of Bank Control is required to conduct trust business.

No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. Before any such application shall be approved, the Board shall make an investigation to determine whether or not the applicant has complied with all the provisions of law, whether in the judgment of the Board the applicant is qualified to conduct such a business and whether the conduct of such a business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

**SECTION 34‑21‑20.** Examination; rules and regulations.

All state chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by the State Board of Financial Institutions and are further subject to rules and regulations promulgated by the Board.

**SECTION 34‑21‑30.** Fiduciary assets shall be segregated; separate books and records; officer in charge.

Banks, trust companies, or corporations acting in a fiduciary capacity shall segregate all assets held in any fiduciary capacity from the general assets of the bank, trust company, or corporation and shall keep a separate set of books or records showing in proper detail all transactions relative to this fiduciary business, and these books and records must be under the management of an officer whose duty must be prescribed by the board of directors.

**SECTION 34‑21‑40.** Forms of security for funds received or held in trust.

Funds received or held in the trust department of the bank or by a trust company awaiting investment or distribution must be secured to the trust department or trust company if these funds have been deposited in its own bank, in any of its affiliate banks, or in any other banking corporation by:

(1) furnishing an indemnity bond in a responsible surety company authorized to do business in this State; or

(2) pledging as collateral:

(a) obligations of the United States;

(b) obligations fully guaranteed both as to principal and interest by the United States;

(c) general obligations of this State or a political subdivision of this State; or

(d) obligations of the Federal National Mortgage Association, the Federal Home Loan Banks, Federal Farm Credit Banks, or the Federal Home Loan Mortgage Corporation; or

(3) providing an irrevocable letter of credit issued by the Federal National Mortgage Association, the Federal Home Loan Banks, Federal Farm Credit Banks, or the Federal Home Loan Mortgage Corporation, in which the letter of credit otherwise meets any criteria established and prescribed by the State Treasurer for public funds.

**SECTION 34‑21‑50.** Investment of funds.

Funds held by the trust department shall be invested as soon as practicable in strict accordance with the will or agreement governing the trust and in the absence of such direction shall be invested under the terms of the laws for such investments in this State. The investments shall be made by an investment committee, appointed by the board of directors, and all such investments shall be approved by the board of directors.

**SECTION 34‑21‑60.** Investments shall be kept separate.

The investments of each individual trust shall be kept separate and distinct from all other trusts and shall be plainly marked.

**SECTION 34‑21‑70.** Custody of securities.

The securities of the trust department for each individual trust shall be in the joint custody of two or more officers or other employees designated by the board of directors of the bank or trust company, as the case may be, and such officers or employees shall be bonded.

ARTICLE 3.

COMMON TRUST FUNDS

**SECTION 34‑21‑210.** Definitions.

The following terms used in this article shall have the meanings ascribed to them in this section unless the context indicates otherwise:

(1) “Trust institution” means any state bank, any national bank, any building and loan association, savings association, savings and loan association, savings bank, or any trust company authorized to conduct a trust business in this State, or any trust company, authorized to act in a fiduciary capacity in this State, and under the supervision of the Comptroller of the Currency of the United States, or the Federal Reserve System, or the State Board of Bank Control of South Carolina;

(2) The term “fiduciary” means a trust institution 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, guardian of estates, committee of estates of persons non compos mentis, and managing agent;

(3) The term “common trust fund” means a fund maintained by a trust institution, exclusively for the collective investment and reinvestment of moneys contributed thereto by the institution in its capacity as a fiduciary or cofiduciary and established, maintained and administered pursuant to the requirements of this article;

(4) The term “estate” or “estates” means any trust, estate or fund administered by a trust institution in a fiduciary capacity;

(5) The term “participation” means the interest of a participating estate in the common trust fund;

(6) The term “security” or “securities” means all types of property in which the trust institution is authorized to invest the assets of the common trust fund; and

(7) The term “managing agency” means the fiduciary relationship assumed by a bank upon the creation of an account so entitled which confers investment discretion on the bank and imposes upon it the fiduciary responsibilities imposed upon trustees under will or deed.

(8) The term “affiliate” means any bank, state or national, or trust company which is (i) duly authorized to act as a fiduciary, wherever located, (ii) under the supervision of the Comptroller of the Currency of the United States, the Federal Reserve System, or a state banking regulatory board or commission, and (iii) a member of the same affiliated group, as defined in Section 1504 of the Internal Revenue Code of 1954, as amended, as a particular trust institution.

**SECTION 34‑21‑220.** Collective investment of funds.

Funds held by a trust institution may be invested collectively:

(1) In common trust funds maintained by the trust institution or its affiliate exclusively for the collective investment and reinvestment of monies contributed thereto by the trust institution or its affiliate in their capacities as executor, administrator, committee, guardian, or trustee under a will or deed;

(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;

(3) Under a managing agency agreement expressly providing that such moneys are received by the trust institution in trust;

(4) Moneys held by the trust institution in its capacity as managing agent shall not be invested in collective investment funds established under items (1) or (2) of this section. Property held by the trust institution in its capacity as trustee of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code may be invested in collective investment funds established under the provisions of items (1) or (2) of this section, subject to the provisions herein contained pertaining to such funds. Assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code and held by the trust institution in whatever capacity, may be invested in collective investment funds established under the provisions of item (2) of this section.

**SECTION 34‑21‑230.** Written plan for fund.

Each common trust fund shall be established and maintained in accordance with a written plan, referred to in this article as the plan, approved by resolution of the board of directors of the trust institution and approved in writing by competent legal counsel. The plan shall provide that the common trust fund shall be administered under the laws of this State and of the United States, and in conformity with the rules and regulations promulgated from time to time under authority of such laws, and shall contain full and detailed provisions, not inconsistent with the provisions of this article, as to the manner in which the common trust fund is to be operated, the investment powers with respect to the common trust fund, the allocation and apportionment of income, profits and losses, the terms and conditions governing the admission or withdrawal of investments or participations in the common trust fund, the auditing and settlement of accounts of the trust institution with respect to the common trust fund, the basis and method of valuing securities in the common trust fund, the basis upon which the common trust fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the common trust fund. A copy of the plan shall be available at the principal office of the trust institution for inspection during all regular business hours to any person having an interest in a participation in the common trust fund. The plan may provide for the amortization of the premiums upon bonds or other obligations, the disposition of discounts and profits and the allocation of them or the apportionment of them between principal and income accounts, the establishment and maintenance of a reserve out of current interest from mortgage investments against which realized losses on mortgages may be charged, and other like matters. The provisions of the plan shall control all participations therein and the rights and benefits of all persons interested in such participations as beneficiaries or otherwise.

**SECTION 34‑21‑240.** Amendments to plan.

The plan may be amended from time to time by the fiduciary with the approval of the board of directors of the trust institution and approved in writing by competent counsel. Any such amendment shall be filed with the original plan, together with a certified copy of the resolution of the board of directors of the trust institution approving the amendment.

**SECTION 34‑21‑250.** Management, control and ownership of fund.

The trust institution shall have the exclusive management and control of each common trust fund administered by it and the sole right at any time to sell, convert, exchange, transfer or otherwise change or dispose of the assets comprising any such common trust fund. The ownership of such assets shall be solely in the trust institution as fiduciary and shall be considered as assets held by it as fiduciary.

**SECTION 34‑21‑260.** Propriety of investments in fund.

Any trust institution in its capacity as a fiduciary or cofiduciary, whether such fiduciary capacity arose before or is created after this article takes effect, may invest funds which it lawfully holds for investment in such capacity in participations in one or more common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship, and if, in the case of cofiduciaries, the trust institution procures the consent of its cofiduciary or cofiduciaries to such investment.

**SECTION 34‑21‑270.** Limitation on investment in obligations of any one person, firm or corporation.

Except in the case of collective investment funds described in Section 34‑21‑220(2), 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 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.

**SECTION 34‑21‑280.** Collective investment fund may be considered as a whole in determining propriety of investment.

In order to determine whether the investment of funds received or held by the trust institution as fiduciary in a participation in a collective investment fund is proper, the trust institution 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 nonincome producing.

**SECTION 34‑21‑290.** Authority of estates restricted to legal investments.

If the instrument under which a trust institution acts as fiduciary, whether such fiduciary capacity arose before or is created after this article takes effect, shall either expressly or by its silence limit or restrict the investment of moneys of the estate and securities to the class authorized by law as legal investments, the trust institution may, in its capacity as sole fiduciary or with the consent of any person acting with it in a fiduciary capacity, invest and reinvest moneys of the estate in any such common trust fund maintained by the trust institution if the securities composing such fund consist solely of securities of the class authorized as legal investments for funds held by a fiduciary.

**SECTION 34‑21‑300.** Authority of estates not restricted to legal investments.

If the instrument under which the trust institution acts as fiduciary, whether such fiduciary capacity arose before or is created after this article takes effect, shall authorize investments of moneys of the estate in a common trust fund or in investments other than those designated by law as legal investments, or shall authorize the trust institution, either alone or in conjunction with any person acting with it in a fiduciary capacity, to exercise its or their discretion with respect to the investment of moneys of the estate, the trust institution may, in its capacity as sole fiduciary or with the consent of any person acting with it in a fiduciary capacity, invest and reinvest moneys, of the estate in any such common trust fund maintained by it. Any such common trust fund consisting solely of moneys of estates contributed thereto by the trust institution pursuant to authority contained in any such instruments creating the fiduciary capacity to invest moneys of the estates in a common trust fund, or in investments other than such legal investments, or pursuant to such discretionary powers with respect to the investment of moneys creating the fiduciary capacity, may be composed of investments other than those of the class designated by law as legal investments for funds held by fiduciaries.

**SECTION 34‑21‑310.** Limitation on interest of any one participant in collective investment fund.

Except in the case of collective investment funds described in Section 34‑21‑220(2), 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 of the then market value of the fund. Provided, that in applying this limitation, if two or more accounts are created by the same person or persons and as much as one half 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.

**SECTION 34‑21‑320.** Making and withdrawing investments.

The trust institution shall invest the moneys of an estate in such common trust fund by adding them thereto, and by apportioning a participation therein to such estate in the proportion that the moneys of the estate added thereto bears to the aggregate value of all the securities of such fund at the time of such investment, including in such securities the moneys of the estate so added. The withdrawal of a participation of such common trust fund shall be on the basis of its proportionate interest in the aggregate value of all the securities of such fund at the time of such withdrawal, as hereinafter provided. The participating interest of any estate in such common trust fund may, from time to time, be withdrawn in whole or in part by the trust institution, and shall be so withdrawn within a period of three months following the written request so to do of any person acting with the trust institution in a fiduciary capacity.

Upon such withdrawals, the trust institution may make distribution in cash or ratably in kind, or partly in cash or partly in kind; provided, that all such distribution as of any one time shall be made on the same basis.

**SECTION 34‑21‑330.** Nature of interest in fund.

No fiduciary account owning or holding an investment or participation in a common trust fund, or any certificate of participation therein, shall be deemed to have individual ownership of any asset in such common trust fund, but shall be deemed to have only a proportionate undivided interest in the common trust fund.

**SECTION 34‑21‑340.** Certificates and other documents evidencing interest in fund shall not be issued.

No trust 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.

**SECTION 34‑21‑350.** Records of investments.

The trust institution shall designate clearly upon its records the names of the fiduciary accounts on behalf of which the trust institution, as fiduciary or cofiduciary, owns a participation in the common trust fund, and the extent of the interest of such fiduciary accounts therein.

**SECTION 34‑21‑360.** Trust institution shall not invest in own fund.

A trust institution shall not invest any of its own funds in a common trust fund administered by it, and if the trust institution, because of a creditor relationship or for any other reason, acquires any interest in a participation in such common trust funds, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance to an account holding a participation until the time of the next withdrawal be deemed to constitute the acquisition of an interest by the trust institution.

**SECTION 34‑21‑370.** Management fees prohibited; reimbursement for expenses.

Trust institutions shall not charge a fee for the management of a common trust fund administered by it or receive, either from the common trust fund or from any fiduciary account the funds of which are invested in participations therein, any additional fees, commissions or compensation of any kind by reason of such participation, but a trust institution shall not be prohibited from reimbursing itself out of a common trust fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating fiduciary accounts if incurred in the separate administration of such participating fiduciary accounts.

**SECTION 34‑21‑380.** Annual audit of fund; financial report.

(1) A trust institution administering a common trust fund shall at least once during each period of twelve months cause an adequate audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank. In the event that such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the common trust fund.

(2) A trust institution administering a common trust fund shall at least once during each period of twelve months prepare a financial report of the fund which shall be filed with the Comptroller of the Currency in the case of national banks and with the State Board of Bank Control in the case of State banks. This report, based upon the above audit, shall contain a list of the investments in the fund showing the cost and the 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.

(3) 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. The report shall make no reference to the performance of funds other than those administered by the bank and no predictions or representations as to future results.

(4) 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. In addition, a full report shall be furnished to any person, and the fact of the availability of such material may be given publicity solely in connection with the promotion of the fiduciary services of the trust institution. Except as herein provided, the trust institution shall not advertise or publicize its common trust fund(s). The cost of printing and distribution of the report shall be borne by the trust institution.

**SECTION 34‑21‑390.** Valuation of securities in fund.

At least once every three months the trust institution administering a common trust fund shall determine the value of the securities in the common trust fund. No participation shall be admitted to or withdrawn from the common trust fund, except on the basis of such valuation and on the date of the determination of such valuation or, if permitted by the plan, within ten business days subsequent to the date of such determination.

**SECTION 34‑21‑400.** Court accounting of fund.

Unless ordered by a court of competent jurisdiction, a trust institution administering a common trust fund shall not be required to render a court accounting with regard to such fund, but it may file returns and make accounting in the same manner and for the same purposes as is provided by law for other fiduciaries.

**SECTION 34‑21‑410.** Mistakes in administration.

No mistake made in good faith and in the exercise of due care in connection with the administration of a common trust fund shall be deemed to be a violation of this article or of any rules or regulations issued pursuant thereto if promptly after discovery of the mistake the trust institution takes whatever action may be practical in the circumstances to remedy the mistake.

**SECTION 34‑21‑420.** Other common trust funds are not prohibited.

Nothing contained in this article shall prohibit a trust institution from establishing, maintaining, and administering one or more common trust funds differing from the requirements of this article, in which only investments or participations are made by such trust institution in accordance with specific contract authority.

**SECTION 34‑21‑430.** Obligations in which funds may be collectively invested.

In addition to the investments permitted under Section 34‑21‑220, funds or other property received or held by a trust institution as fiduciary may be invested collectively as follows:

(1) In a single real estate loan or a direct obligation of the United States, or an obligation fully guaranteed by the United States, if the trust institution owns no participation in the loan or obligation and has no interest therein except in its capacity as fiduciary.

(2) In any investments specifically authorized by court order or authorized by the instrument creating the fiduciary relationship.

(3) In such other manner as shall be approved in writing by the Comptroller of the Currency in the case of national banks and by the State Board of Bank Control in the case of State banks.