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.

HISTORY: 1962 Code Section 8‑580; 1972 (57) 2148.

CROSS REFERENCES

Banks acting as fiduciaries, see Sections 34‑15‑10 et seq.

Nominee registration of securities held by corporate fiduciaries, see Sections 35‑5‑10 to 35‑5‑40.

Provisions of the South Carolina Probate Code relative to trust administration, see Sections 62‑7‑101 et seq.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 157.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 106, Authority to Conduct Trust Business Upon Written Approval.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 136, Trust Companies as Trustees.

Bogert ‑ the Law of Trusts and Trustees Section 151, Oath, Bond, and Letters of Trusteeship.

NOTES OF DECISIONS

In general 1

1. In general

State statutes regulating the trust business are presumptively constitutional. American Trust Co., Inc. v. South Carolina State Bd. of Bank Control (D.C.S.C. 1974) 381 F.Supp. 313.

The statutory classification of domestic trust companies according to the domicil of their corporate owners is not inherently suspect, and the state need not justify the classification by proving a compelling state interest. American Trust Co., Inc. v. South Carolina State Bd. of Bank Control (D.C.S.C. 1974) 381 F.Supp. 313. Constitutional Law 2980

Laws prescribing the financial resources of corporate fiduciaries, governing their conduct, and defining their responsibilities are appropriate means of controlling trust companies since the state has a legitimate interest in assuring that corporate fiduciaries serve the public faithfully. American Trust Co., Inc. v. South Carolina State Bd. of Bank Control (D.C.S.C. 1974) 381 F.Supp. 313. Banks And Banking 310

Classification of domestic trust companies by the domicile or licensing of their corporate ownership bears no rational relation to the lawful discharge of the fiduciary duties or the state’s control over them. American Trust Co., Inc. v. South Carolina State Bd. of Bank Control (D.C.S.C. 1974) 381 F.Supp. 313.

Trust statute which, with certain exceptions, requires the State Board’s approval for conducting a trust business is constitutional. American Trust Co., Inc. v. South Carolina State Bd. of Bank Control (D.C.S.C. 1974) 381 F.Supp. 313.

**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.

HISTORY: 1962 Code Section 8‑581; 1952 Code Section 8‑581; 1942 Code Section 7905; 1932 Code Section 7905; 1930 (36) 1367; 1933 (38) 296; 1936 (39) 1484; 1972 (57) 2557; 1985 Act No. 124, Section 5.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Monteith v. Harby (S.C. 1940) 193 S.C. 349, 8 S.E.2d 629.

Code 1962 Sections 8‑581 to 8‑586 have no retroactive effect. Ex parte Michie (S.C. 1932) 167 S.C. 1, 165 S.E. 359.

**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.

HISTORY: 1962 Code Section 8‑582; 1952 Code Section 8‑582; 1942 Code Section 7906; 1932 Code Section 7606; 1930 (36) 1367; 1985 Act No. 124, Section 6.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 596, Duty to Earmark and Separate Trust Property.

NOTES OF DECISIONS

In general 1

1. In general

Section applies only to cases where banks accept funds to invest or manage in fiduciary capacity, and has no application whatever to a general deposit which creates a mere indebtedness on the part of the bank. Santee Timber Corp. v. Elliott, 1934, 70 F.2d 179, 93 A.L.R. 874. Banks And Banking 80(7)

Trustee’s liability for loss where funds commingled. In Strauss v United States Fidelity & G. Co., 63 F2d 174 (1933, CA4 SC), cert den 289 US 747, 77 L Ed 1492, 33 S Ct 690, the court held that under the provisions of this section [Code 1962 Section 8‑582] and the following sections, a corporate trustee which mingled trust funds with its own and lost them, was liable to make good the loss even in the absence of fraud or negligence. Strauss v. U.S. Fidelity & Guaranty Co., 1933, 63 F.2d 174, certiorari denied 53 S.Ct. 690, 289 U.S. 747, 77 L.Ed. 1492.

Cited in Marchant v. Wannamaker (S.C. 1935) 176 S.C. 369, 180 S.E. 350.

**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.

HISTORY: 1962 Code Section 8‑583; 1952 Code Section 8‑583; 1942 Code Section 7907; 1932 Code Section 7907; 1930 (36) 1367; 1991 Act No. 156, Section 1, eff June 12, 1991; 2006 Act No. 308, Section 1, eff upon approval (became law without the Governor’s signature on June 1, 2006).

Effect of Amendment

The 1991 amendment added “of the bank or by a trust company”, “or trust company”, and “in any of its affiliate banks”.

The 2006 amendment substituted items (1) to (4) for “bonds acceptable for the securing of public funds in the State equal in market value to the amount of funds deposited”.

CROSS REFERENCES

Security when trust funds deposited in bank protected by Federal deposit insurance, see Section 11‑1‑50.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 598, Safe‑Keeping‑Safety Deposit Box and Bank Account.

Bogert ‑ the Law of Trusts and Trustees Section 678, Loans Without Property Security.

**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.

HISTORY: 1962 Code Section 8‑584; 1952 Code Section 8‑584; 1942 Code Section 7908; 1932 Code Section 7908; 1930 (36) 1367.

CROSS REFERENCES

Investment of funds by trust companies, see Sections 34‑13‑150 and 34‑13‑160.

NOTES OF DECISIONS

In general 1

1. In general

Beneficiaries need not affirm or disaffirm benefits of illegal investment in suit to recover amount invested. Where a bank invested trust funds in real estate in violation of the statutory provisions fixing legal investments, the court held that the beneficiaries’ suit against the insolvent bank to recover the amount invested was straight suit for the recovery of the amount invested against the defendants as a preferred claim and that it was not necessary for them at that time, if at all, to affirm or disaffirm whether or not they would release or claim any benefits under the investment made and that that question could be properly determined when, and if, it arose after the trial of the present case. Blankenship v. Zimmerman (S.C. 1936) 179 S.C. 171, 183 S.E. 760.

**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.

HISTORY: 1962 Code Section 8‑585; 1952 Code Section 8‑585; 1942 Code Section 7909; 1932 Code Section 7909; 1930 (36) 1367.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 596, Duty to Earmark and Separate Trust Property.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Blankenship v. Zimmerman (S.C. 1936) 179 S.C. 171, 183 S.E. 760.

Quoted in Marchant v. Wannamaker (S.C. 1935) 176 S.C. 369, 180 S.E. 350.

**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.

HISTORY: 1962 Code Section 8‑586; 1952 Code Section 8‑586; 1942 Code Section 7910; 1932 Code Section 7910; 1930 (36) 1367.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 136, Trust Companies as Trustees.

Bogert ‑ the Law of Trusts and Trustees Section 583, Duty of Trustee to Take Possession.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Monteith v. Harby (S.C. 1940) 193 S.C. 349, 8 S.E.2d 629.

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.

HISTORY: 1962 Code Section 8‑587; 1955 (49) 538; 1965 (54) 608; 1985 Act No. 124, Section 7; 1986 Act No. 470, Sections 1, 2.

Federal Aspects

Provisions of Section 1504 of the Internal Revenue Code of 1954, as amended, see 26 U.S.C.A. Section 1504.

NOTES OF DECISIONS

In general 1

1. In general

The normal relationship between a bank and its customer is one of creditor‑debtor and not fiduciary in nature; however, a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of services the bank offers, and such a relationship charges the bank with a duty to disclose material facts that may affect its customer’s interests. Regions Bank v. Schmauch (S.C.App. 2003) 354 S.C. 648, 582 S.E.2d 432. Banks And Banking 100; Banks And Banking 119

No fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it. Regions Bank v. Schmauch (S.C.App. 2003) 354 S.C. 648, 582 S.E.2d 432. Banks And Banking 100

Bank’s relationship with customer who pledged certificate of deposit (CD) as collateral for son’s loans and guaranteed son’s loans was not fiduciary in nature, where customer did not rely on anyone before pledging her CD, customer did not ask questions about the guaranty or any documents she signed, and there was no evidence customer placed a special trust in the bank. Regions Bank v. Schmauch (S.C.App. 2003) 354 S.C. 648, 582 S.E.2d 432. Banks And Banking 100

**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.

HISTORY: 1962 Code Section 8‑588; 1955 (49) 538; 1965 (54) 608; 1986 Act No. 470, Section 3.

CROSS REFERENCES

Tax returns by trust institutions maintaining common trust funds, see Section 12‑6‑4940.

Federal Aspects

Internal Revenue Code, see 26 U.S.C.A. Sections 1 et seq.

**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.

HISTORY: 1962 Code Section 8‑589; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑590; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑591; 1955 (49) 538.

CROSS REFERENCES

Provisions of the South Carolina Probate Code relative to multiple‑party accounts, including joint accounts, P. O. D. accounts, and trust accounts, see Sections 62‑6‑101 et seq.

**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.

HISTORY: 1962 Code Section 8‑592; 1955 (49) 538.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 677, Common Trust Funds.

**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.

HISTORY: 1962 Code Section 8‑592.1; 1965 (54) 608; 1969 (56) 283.

**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.

HISTORY: 1962 Code Section 8‑592.2; 1965 (54) 608.

**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.

HISTORY: 1962 Code Section 8‑593; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑594; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑595; 1955 (49) 538; 1965 (54) 608; 1969 (56) 283.

**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.

HISTORY: 1962 Code Section 8‑596; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑597; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑598; 1955 (49) 538; 1965 (54) 608.

**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.

HISTORY: 1962 Code Section 8‑599; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑599.1; 1955 (49) 538; 1965 (54) 608.

**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.

HISTORY: 1962 Code Section 8‑599.2; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑599.3; 1955 (49) 538; 1965 (54) 608; 1969 (56) 733.

**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.

HISTORY: 1962 Code Section 8‑599.4; 1955 (49) 538; 1978 Act No. 598.

**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.

HISTORY: 1962 Code Section 8‑599.5; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑599.6; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑599.7; 1955 (49) 538.

**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.

HISTORY: 1962 Code Section 8‑599.6; 1955 (49) 538.