

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of General Administration

(agency name)

Administrative Order No. 70

(1) I, Thomas H. Oldfield, director of the Division of Banking, Department of General Administration

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

the amendment of WAC 50-12-110 to further expand description of permissible investment securities by state chartered banks.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 87-16-109

filed with the code reviser on 8-5-87. These rules shall take effect:

- [X] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[X] (a) This rule is promulgated pursuant to RCW 30.08.140 and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED September 30 19 87

STATE OF WASHINGTON FILED

SEP 30 1987

By Thomas H. Oldfield, Supervisor Division of Banking Title

CODE REVISER'S OFFICE WSR 87-20-036

AMENDATORY SECTION (Amending Order 62, filed 9/13/85)

WAC 50-12-110 INVESTMENT SECURITIES-- (LIMIT-ON-HOLDINGS) PERMISSIBLE INVESTMENTS. (No bank or trust company may purchase or hold obligations of a single obligor in excess of the limits prescribed by RCW 30-04.110, nor purchase or hold any obligation not authorized by Title 30-RCW, except for the following:

(1) Obligations of the United States;

(2) Obligations issued, insured, or guaranteed by a department or agency of the United States, including obligations of such departments or agencies representing an interest in a loan or pool of loans, if such obligation commits the full faith and credit of the United States to its repayment;

(3) General obligations of a state or political subdivision of a state including but not limited to obligations of a county, city, town, municipal corporation, or any publicly-owned entity that is an instrumentality of a state or municipal corporation;

(4) Obligations of any state or political subdivision of a state if a state or political subdivision of a state having general powers of taxation has unconditionally promised to make sufficient funds available for full repayment of the obligation;))

A bank or trust company may purchase or hold obligations of a single obligor which are "investment securities," as defined below, and meet the following guidelines for proper "investment security" management. The term "investment security" shall mean a marketable obligation evidencing indebtedness of any person, copartnership, association, or corporation; of the government of the United States or any agency thereof; of any state, or political subdivision thereof; or of any publicly-owned entity that is an instrumentality of a state or municipal corporation in the form of bonds, notes, and/or debentures. They exclude investments which are predominately speculative but shall include:

(1) Type I securities which a bank may deal in, purchase, and sell for its own account without limitation. These securities include:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or agency of the United States, including obligations of such departments or agencies representing an interest in a loan or pool of loans;

(c) General obligations of a state or political subdivision including but not limited to obligations of a county, city, town, municipal corporation, or any publicly-owned entity that is an instrumentality of a state or municipal corporation;

(d) Obligations of any state or political subdivision of a state if a state or political subdivision of a state having general powers of taxation has unconditionally promised to make sufficient funds available for full repayment of the obligation; and

(e) Revenue bonds issued by public improvement agencies.

(2) Type II securities which a bank may deal in, purchase and sell for its own account subject to a twenty percent of capital and surplus limitation and any limitation set forth in WAC 50-12-115

(2)(c). These include obligations issued by any state or political subdivision, or any agency of a state or political subdivision for housing, university or dormitory purposes. Such obligations include:

(a) Obligations issued by any state or a political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions; and

(b) Obligations which finance the construction or improvement of facilities used by a hospital, provided that the hospital is a department or a division of a university, or otherwise provides a sufficient nexus with university purposes.

(3) Type III securities which a bank may purchase and sell for its own account with a twenty percent of capital and surplus limitation and any limitation set forth in WAC 50-12-115 (2)(c), but may not deal in. These include investment securities issued by corporations, provided that such securities have received in the most recent edition one of the four highest rating grades by Standard and Poor's, Moodys,

or equivalent rating service. Unrated securities must be investment grade and be of equivalent quality to the four highest rating grades and where the investment characteristics are distinctly or predominantly not speculative.

NEW SECTION

WAC 50-12-115 INVESTMENT SECURITIES--PROPER MANAGEMENT. (1) A bank may purchase a Type I security for its own account, provided it is permissible under the provisions of Title 30 RCW and this regulation, if through prudent banking judgment it determines there is adequate evidence that the obligor will be able to perform all necessary undertakings in connection with the security, including all debt service requirements.

(2) (a) A bank may purchase a Type II or III security for its own account when through prudent banking judgment (which may be based in part upon estimates which it believes to be reliable), it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with the security, including all debt service requirements, and that the security is marketable so that it can be sold with relative promptness at a fair market value.

(b) A bank may, subject to the limitations set forth in (c) of this subsection, purchase a security of Type II or III for its own account although its judgment with respect to the obligor's ability to perform is based predominantly upon estimates it believes to be reliable. This subsection permits a bank to exercise a somewhat broader range of judgment with respect to a more restricted portion of its investment portfolio.

(c) If a bank holds at any time Type II or III securities which would not be eligible for purchase pursuant to (a) of this subsection in a total amount in excess of five percent of the bank's capital and surplus, they are to be charged down to market value or a specific reserve is to be established within ninety days.

(3) Each bank shall maintain in its files credit information adequate to demonstrate that it has exercised prudence in making the determinations and carrying out the transactions involving underwriting, dealing in, and purchase and sale of investment securities. This information shall be retained:

(a) When securities are purchased for the bank's own portfolio, as long as the security remains in the portfolio;

(b) When securities are underwritten by the bank, for the maturity or the life of the security; and

(c) With regard to dealer activities, for periods set forth in the relevant rules of the municipal securities rulemaking board.

(4) When a bank purchases an investment security convertible into stock or with stock purchase warrants attached, entries must be made by the bank at the time of purchase to write down the cost of such security to an amount which represents the investment value of the security considered independently of the conversion feature or attached stock purchase warrants. Purchase of securities convertible into stock at the option of the issuer is prohibited.

(5) When an investment security is purchased at a price exceeding par or face value, the bank shall:

(a) Charge off the entire premium at the time of purchase; or

(b) Provide for a program to amortize the premium paid or that portion of premium remaining after the write-down subject to subsection (2) of this section so that such premium or portion thereof shall be entirely extinguished at or before the maturity of the security.

(6) Each bank shall take measures to insure the cumulative investment holdings do not exceed the limitations for a specific investment set forth in Title 30 RCW.

(7) The board of directors, a committee thereof, or a duly appointed committee of senior level management shall review at least quarterly the bank's investment portfolio to insure compliance with the provisions contained in WAC 50-12-110 through 50-12-116.

(8) The restrictions and limitations set forth in this section do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted.

NEW SECTION

WAC 50-12-116 INVESTMENT SECURITIES--INVESTMENT IN INVESTMENT COMPANIES. A bank or trust company may invest in shares of an investment company provided that all of the following conditions are met:

(1) The investment company must be registered with Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933 or be a privately offered fund sponsored by an affiliated commercial bank.

(2) The shareholder has an equitable and equal proportionate undivided interest in the underlying assets of the investment company.

(3) When an investment company's assets consist solely of and are expressly limited to obligations that are eligible for unlimited investment (Type I) as described in WAC 50-12-100, there is no limit on the bank's investment. However, where the investment company's portfolio contains, or is permitted to contain, securities subject to the bank's investment or lending limitations, investment by the bank shall be subject to a twenty percent of capital and surplus limitation.

(4) The shareholders are protected against personal liability for acts or obligations of the investment company.

(5) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific investment companies and recorded in the official board minutes; and procedures, standards, and controls for managing such investments are implemented prior to acquirement of these investments.

(6) If the investment company makes use of futures, forwards, options, repurchase agreements and securities lending arrangements, their use must be consistent with standards adopted for use of such instruments in the bank's portfolio.

(7) Regulatory reporting of holdings in investment companies is consistent with established standards for "marketable equity securities."

NEW SECTION

WAC 50-12-117 INVESTMENTS IN CORPORATIONS. Nothing in WAC 50-12-110, 50-12-115, or 50-12-116 shall limit the authority of a bank or trust company to invest in corporations or entities, with the prior authorization of the supervisor, pursuant to RCW 30.04. (section 1, chapter 498, Laws of 1987).

*This section was rejected because it wasn't proposed—
Gary Reid talked to Thomas Oldfield, Supervisor of Banking,
October 5, 1987.*