

Chapter 208-536 WAC

ADMINISTRATION OF TRUST COMPANIES—INVESTMENTS, ETC.

(Formerly chapter 50-36 WAC)

WAC

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50-36-010, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-010, filed 8/14/73.]

WAC 208-536-020 Administration of fiduciary powers. (1)(a) The board of directors is responsible for the proper exercise of fiduciary powers by the trust company. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the trust company in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the trust company's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s) or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every qualified fiduciary subject to this regulation and exercising fiduciary powers in this state shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the trust company and its trust department.

(4)(a) The trust department may utilize personnel and facilities of other departments of the trust company or its affiliates, and other departments of the trust company may utilize the personnel and facilities of the trust department or its affiliates only to the extent not prohibited by law and as long as the separate identity of the trust department is preserved.

(b) Agency agreements. Pursuant to a written agreement, a trust company exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another trust company or other entity, and may purchase services related to the exercise of fiduciary powers from another trust company or other entity.

WAC 208-536-010 Definitions. For purposes of this chapter, the following words are defined as:

(1) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the state of Washington including, but not limited to, trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, agent, custodian, investment adviser, if the trust company receives a fee for its investment advice, escrow agent, corporate bond paying and transfer agent, escrow holder, managing agent, depository, committee of estates of incompetents, and any capacity in which the trust company possesses investment discretion on behalf of another.

(2) "Trust department" means that group or groups of officers and employees of a trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the trust company, whether or not the group or groups are so named.

(3) "Agency" means the fiduciary relationship in which title to the property constituting the agency does not pass to the trust institution but remains in the owner of the property, who is known as the principal, and in which the agent is charged with certain specific duties with respect to the property.

(4) "Agency coupled with an interest" means an agency in which the agent has a legal interest in the subject matter. Such an agency is not terminated automatically, as are other agencies, by the death of the principal but continue in effect until the agent can realize upon its legal interest.

(5) "Managing agent" means the fiduciary relationship assumed by a trust company upon the creation of an account which names the trust company as agent and confers investment discretion upon the trust company.

(6) "Trust company" as used herein shall also include banks which are authorized to exercise trust powers.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, §

(5) Fiduciary records shall be kept separate and distinct from other records of the trust company and maintained in compliance with the provisions of RCW 30.04.240. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, amended and recodified as § 208-536-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-020, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-020, filed 8/14/73.]

WAC 208-536-030 Audit of the trust department. A committee of directors, exclusive of any active officers of the trust company, shall at least once during each calendar year make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this regulation and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-030, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-030, filed 8/14/73.]

WAC 208-536-040 Collective investment funds—Funds authorized. Any trust company qualified to act as fiduciary in this state may establish common trust funds (referred to in this regulation as "collective investment funds") for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment, and provided such investment is not in contravention with the provisions of chapter 30.24 RCW:

(a) In a common trust fund maintained by the trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the trust company in its capacity as trustee, executor, administrator, or guardian.

(b) 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.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-040, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-040, filed 8/14/73.]

WAC 208-536-050 Collective investment funds—Administration of funds. Collective investments of funds or

other property held by such qualified fiduciary (and 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 trust company's board of directors or by a committee authorized by the board and filed with the director of the department of financial institutions. The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the director of the department of financial institutions 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 trust company 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 specific 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 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. A copy of the plan shall be available at the principal office of the trust company 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 (a) or (b) of WAC 208-536-040, 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 code may be invested in collective investment funds established under the provisions of subparagraph (b) of WAC 208-536-040, if the fund qualifies for tax exemption under Revenue Ruling 56-267 and following rulings.

(3) All participants 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 trust company as fiduciary in a participation in a collective investment fund is proper, the trust company 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.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, amended and recodified as § 208-536-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-050, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-050, filed 8/14/73.]

WAC 208-536-060 Collective investment funds—Valuation of assets, admissions and withdrawals. (1) Not less frequently than once during each period of 3 months a trust company 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: (a) On the basis of such valuation, and (b) as of such valuation date, (c) 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 trust company and approved in such manner as the board of directors shall prescribe, and (d) no requests or notice may be canceled or countermanded after the valuation date. However, in the case of a fund that is invested primarily in real estate or other assets that are not readily marketable, the value of the fund's assets shall be determined at least once each year.

(2) 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.

(3) 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.

(4) Any trust company administering a collective investment 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, and if prior to any admissions to or withdrawals from a fund the trust company shall determine that after effecting the admissions and withdrawals which are to be made less than 40 percent 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.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-060, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-060, filed 8/14/73.]

WAC 208-536-070 Collective investment funds—Audit. A trust company administering a collective investment fund shall at least once during each period of 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 trust company. 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.

(8/22/00)

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-070, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-070, filed 8/14/73.]

WAC 208-536-080 Collective investment funds—Financial reports. (1) A trust company 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 director of the department of financial institutions within 90 days after the end of the fund's fiscal year. 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.

(2) 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 WAC 208-536-040, neither the report nor any other publication of the trust company shall make reference to the performance of funds other than those administered by the trust company.

(3) 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 will be borne by the trust company. 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 WAC 208-536-040 may be given publicity solely in connection with the promotion of the fiduciary services of the trust company.

(4) Except as herein provided, the trust company shall not advertise or publicize its collective investment fund(s); provided, however, that publication in a newspaper, periodical, or other medium of the net asset value of collective investment fund(s) for which a daily net asset value is available, shall not be considered an advertisement or publication prohibited by this section. Restraint is required in fiduciary advertisements to preclude the violation of securities laws including the Mutual Fund Reform Act.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, amended and recodified as § 208-536-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-080, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-080, filed 8/14/73.]

WAC 208-536-090 Collective investment funds—Investments and administration. (1) A trust company administering a collective investment fund shall have the exclusive management thereof, except as a prudent person might delegate responsibilities to others.

(2) No trust company 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,

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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 part, funds held by a trust company as fiduciary for its own employees may be invested in a collective investment fund.

(3) A trust company may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the trust company 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.

(4) Any trust company administering a collective investment fund may purchase for its own account from such fund any devaluated 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 trust company 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.

(5) Except in the case of collective investment funds described in paragraph (b) of WAC 208-536-040:

(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 10 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;

(b) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any closely held corporation, as may be determined by the director of the department of financial institutions, or, 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 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 its agencies or other obligations fully guaranteed by the United States or its agencies as to principal and interest: And Provided Further, That this limitation shall not apply to investments in securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as now or hereafter amended, if both of the following conditions are met:

(i) The portfolio of the investment company or investment trust is limited to such obligations of, or fully guaranteed by, the United States or its agencies and to repurchase agreements fully collateralized by such obligations; and

(ii) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian;

(6) In addition to the investments permitted under WAC 208-536-040, funds or other property received or held by a trust company as fiduciary may be invested collectively, to the extent not prohibited by law, as follows:

(a) 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."

(b) 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 issue: Provided, That the trust company owns no participation in the loan or obligation and has no interest in any investment therein except in its capacity as fiduciary.

(c) In a common trust fund maintained by the trust company for the collective investment of cash balances received or held by a trust company in its capacity as trustee, executor, administrator, or guardian, which the trust company considers to be individually too small to be invested separately to advantage. The total investment for such fund must not exceed \$1,000,000; the number of participating accounts is limited to 100, and no participating account may have an interest in the fund in excess of \$1,000,000: 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 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 chapter 208-536 WAC.

(d) 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 or 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 any provision of this regulation, in particular, but not limited to the provisions beginning with new section WAC 208-536-040.

(e) In such other manner as shall be approved in writing by the director of the department of financial institutions.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, amended and recodified as § 208-536-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-090, filed 12/18/98, effective 1/18/99. Statutory Authority: RCW 30.04.030. WSR 90-07-011, § 50-36-090, filed 3/13/90, effective 4/13/90; Order 22, § 50-36-090, filed 8/14/73.]

WAC 208-536-100 Organization and management fees.

(1) A trust company administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund but shall absorb the costs of establishing or reorganizing a collective investment fund.

(2) The trust company may charge a fee for the management of the collective investment fund provided (a) the fee is

permitted under applicable law (and complies with fee disclosure requirements, if any) in the state in which the trust company maintains the fund; and (b) the amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

(3)(a) 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 trust company administering the fund.

(b) A trust company may (but shall not be required to) transfer up to 5 percent 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 1 percent 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.

(c) 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.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-100, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-100, filed 8/14/73.]

WAC 208-536-110 Certificate of interest. No trust company administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form, except to provide a withdrawing account with an interest in a segregated investment.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. WSR 99-01-119, § 50-36-110, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-110, filed 8/14/73.]

WAC 208-536-120 Remedy of mistake made in good faith. 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 trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

[Statutory Authority: RCW 30.04.030 and 43.320.040. WSR 00-17-141, recodified as § 208-536-120, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-120, filed 8/14/73.]