

1 **04 NCAC 03D .0105** is adopted with changes as published in 29:09 NCR 1043 as follows:

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3 **04 NCAC 03D .0105 DEFINITIONS**

4 As used in this Subchapter:

- 5 (1) "Board of Directors" shall have the same meaning as defined in G.S. 53-301(a)(6a).
6 (2) "Collective investment fund" shall mean any fund established pursuant to 12 C.F.R. 9.18,
7 ~~including later amendments and editions.~~ which is incorporated by reference in Rule 04
8 NCAC 03D .0304.
9 (3) "State trust entity" shall mean a "state bank" or "state trust company" as defined in G.S. 53-
10 301(a)(43) and (45).
11 (4) "Trust business" shall have the same meaning as defined in G.S. 53-301(a)(50).

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13 *History Note:* *Authority G.S. 53-366; 53C-2-5;*
14 *Eff. April 1, 2015.*

04 NCAC 03D .0201 is amended as published in 29:09 NCR 1043 as follows:

**04 NCAC 03D .0201 ~~EXAMINING COMMITTEE REPORT~~ REPORTS OF CONDITION OF STATE
TRUST DEPARTMENT ENTITIES**

~~The board of directors of each~~ Each state bank with a trust department, entity, on a form or forms provided by the Office of the Commissioner of Banks, shall submit ~~annually the results of a required examination of the trust department of a state bank conducted by an examining committee appointed by the bank's board of directors. The form contains a balance sheet and a questionnaire covering various statutory and regulatory requirements. reports of~~ condition ~~[which]~~ that shall include information on operations, statutory and regulatory requirements, supervisory standards, and assets under management. The form or forms shall be obtained from and filed with:

Office of the Commissioner of Banks

316 West Edenton Street

4309 Mail Service Center

Raleigh, North Carolina 27699-4309.

Forms 29TC, 29A, and TARS® may be submitted electronically at:

<http://www.nccob.gov/Public/financialinstitutions/banks/banksff.aspx>

History Note: Authority G.S. ~~53-83; 53-92; 53-366; 53-367; 53C-2-5; 53C-8-3;~~

Eff. February 1, 1976;

Amended Eff. April 1, 2015; September 1, 2006; September 26, 1979.

1 04 NCAC 03D .0302 is amended as published in 29:09 NCR 1044 as follows:

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3 04 NCAC 03D .0302 **ADMINISTRATION OF FIDUCIARY POWERS TRUST BUSINESS**

4 (a) ~~The trust department shall be separate and apart from every other department of the bank. The trust~~
5 ~~department may~~ A state trust entity shall conduct its trust business separate and apart from any other
6 business it conducts. A state trust entity may, however, utilize personnel and facilities of other departments
7 of the ~~bank~~ state trust entity and other departments of the ~~bank~~ state trust entity may utilize ~~the~~ its trust
8 personnel and facilities ~~of the trust department only~~ to the extent not prohibited by law.

9 (b) Board of Directors

10 (1) ~~The Board of directors is responsible for the proper exercise of fiduciary powers by the~~
11 ~~bank. All matters pertinent thereto, including the determination of policies, the~~
12 ~~investment and disposition of property held in a fiduciary capacity, and the direction and~~
13 ~~review of the actions of all officers, employees, and committees utilized by the bank in~~
14 ~~the exercise of its fiduciary powers, are the responsibility of the Board.~~ trust business of a
15 state trust entity shall be managed by or under the direction of its board of directors. In
16 discharging this responsibility, the ~~Board~~ board of directors may assign, by action duly
17 entered in the minutes, the administration ~~of such~~ of the ~~bank's fiduciary powers~~ state
18 trust entity's trust business as it may consider proper to assign to such director(s),
19 officers(s), or employee(s), who are qualified and competent to administer fiduciary
20 duties and responsibilities, as trust business, and it may designate and ~~may~~ appoint such
21 committees of director(s) ~~and/or~~ or officer(s) as it deems advisable to supervise the trust
22 ~~department.~~ business.

23 (2) No ~~fiduciary account~~ trust business shall be accepted without the prior approval of the
24 ~~Board,~~ board of directors, or of the director(s), officer(s), or committee(s) to whom the
25 ~~Board~~ board of directors may have designated the performance of that responsibility. A
26 written record shall be made of such acceptances and of the relinquishment or closing out
27 of all ~~fiduciary accounts.~~ each account. Upon the acceptance of an account for which the
28 ~~bank~~ state trust entity has investment responsibility, a ~~prompt~~ review of the assets shall
29 be made. The ~~Board~~ board of directors shall also ensure that at least once during every
30 calendar year thereafter, and within 15 months of the last review, all the assets held in ~~or~~
31 ~~for~~ each fiduciary ~~[such]~~ account ~~where that the bank~~ state trust entity has investment
32 responsibilities ~~for~~ are reviewed to determine the advisability of retaining or disposing of
33 such assets.

34 (c) All officers and employees taking part in the ~~operation of the trust department~~ administration of trust
35 business shall be adequately bonded.

36 (d) Every ~~bank exercising fiduciary powers~~ state trust entity shall designate, employ, or retain competent
37 legal counsel who shall be readily available to ~~pass upon fiduciary matters and to advise the bank and its~~
38 ~~trust department.~~ advise on the trust business it conducts.

1 (e) ~~Trust assets of a negotiable nature~~ Negotiable and tangible assets held by the ~~bank~~ state trust entity in
2 its own vaults shall be placed in the joint custody of at least two or more bonded officers or employees
3 designated by the ~~Board~~ board of directors.

4 (f) Funds ~~received or~~ held by a ~~bank as~~ state trust entity in a fiduciary capacity awaiting investment or
5 distribution shall be promptly invested, pursuant to the provisions of G.S. 36A-63 and G.S. 53-43(6). 53-
6 163.1.

7 (g) ~~Investments~~ Trust business investments by a ~~bank as~~ fiduciary in a savings account or accounts or in its
8 certificate or certificates of deposit shall be secured by the pledge of securities in the same manner and to
9 the same extent as required by Subsection (f) of this Rule for demand deposits. ~~state trust entity in its own~~
10 depository accounts [must] shall be secured in the manner and to the extent required by G.S. 53-163.1 and
11 G.S. 53-163.3.

12 (h) Agency accounts shall not be overdrawn nor advances made thereto unless the instrument establishing
13 the agency specifically authorizes the bank as agent to borrow money. Advances, or overdrafts, to trusts or
14 agencies shall not be made from funds belonging to other trusts or agencies. Where it is deemed necessary
15 in the proper administration of a trust to make temporary advances, such advances shall be made from
16 funds belonging to the bank and shall at no time exceed 50 percent of the estimated income of that trust for
17 a six months' period. Any advance exceeding this amount shall be made in the form of a loan from the bank
18 or otherwise, and such loan shall be expressly authorized by the trust instrument or properly approved by
19 the courts.

20 (i) Funds received or held by a bank as fiduciary shall not be invested by it in stock or obligation of, or
21 property acquired from, the bank or its directors, officers, or employees, or their interests, or in stock or
22 obligations of, or property acquired from, affiliates of the bank. This requirement contemplates that the
23 bank will not invest trust funds in the obligations of any organizations in which officers, directors, or
24 employees of the bank have such an interest as might affect the exercise of the best judgment of the
25 management of the bank in investing trust funds.

26 (j) Unless expressly approved by the Court, a trustee, pursuant to G.S. 36A-66, may not purchase or sell
27 property from a trust from or to itself.

28 (k) ~~Transactions between fiduciary accounts held by a trustee may occur to the extent permitted by G.S.~~
29 36A-68.

30 (l) ~~A committee of at least three directors or stockholders shall be appointed annually to examine, or to~~
31 superintend the examination of the assets and liabilities of the trust department of each bank engaging in
32 trust business, and to report to the Board of directors the result of such examination. The committee, with
33 the approval of the board of directors, may provide for such examination by a certified public accountant,
34 or by the auditing department of the bank. A copy of such report of examination, which is herein required
35 to be made, attested, and verified under oath by the signatures of at least three members of such committee,
36 shall forthwith be filed with the Commissioner of Banks.

1 ~~(m) Funds received or held by a bank as fiduciary shall not be invested collectively except as provided in~~
2 ~~Rule .0304 of this Subchapter.~~

3 *History Note: Authority G.S. ~~36A-63; 36A-66; 36A-68; 53-43(6); 53-92; 53-104; 53-163.1; 53-163.3;~~*
4 *~~53-356; 53-366; 53C-2-5; 53C-4-6;~~*

5 *Eff. February 1, 1976;*

6 *Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979.*

04 NCAC 03D .0304 is amended with changes as published in 29:09 NCR 1045 as follows:

04 NCAC 03D .0304 COLLECTIVE INVESTMENT

(a) Funds held for trust business accounts by a ~~bank as fiduciary state trust entity~~ may be invested collectively in one or more ~~common trust funds~~, collective investment funds to the extent permissible for the accounts. Such funds shall be organized and administered in accordance with the provisions of 12 C.F.R. 9.18, the same which is herein incorporated by reference except that any reference in the aforesaid statute to the Comptroller of the Currency shall, for the purposes of banks organized under the laws of North Carolina, [state trust entities] be deemed to refer to the Commissioners [Commissioner] of Banks. 12 C.F.R. 9.18.

(b) 12 C.F.R. 9.18 is herein incorporated by reference, including all subsequent amendments and editions, and may be accessed at the U.S. Printing Office website at http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8 at no cost at the time of adoption of this Rule. However, any reference in the regulation to “Comptroller of Currency” shall, for the purpose of state trust entities, be deemed to refer to the “Commissioner of Banks.”

~~(b) Pursuant to G.S. 150B-21.6, any reference to 12 C.F.R. 9.18 shall automatically include any later amendment and [to or] edition to [of] that regulation.~~

History Note: Authority ~~G.S. 36A-92; 53-92; 53-104; 53-163.7; 53-366; 53C-2-5;~~

Eff. February 1, 1976;

Amended Eff. April 1, 2015; May 1, 1992; November 1, 1982; September 26, 1979.