

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule Forms, please correct the citations to reflect Title 4, not 1.

Also, please confirm compliance with G.S. 53C-2-5(a).

In the History Notes, please put Chapter 53 statutes before Chapter 53C statutes. You don't need to show that you made the move; simply move them so they are in correct numerical order.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: 04 NCAC 03D .0105

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In order to make changes to an adoption after publication, please refer to Rule 26 NCAC 02C .0405(b)(1).

In (b), please fix the formatting and use 10 point font (see Rule 26 NCAC 02C .0108).

In (b), please say, "12 C.F.R. 9.18, which is herein incorporated by reference..."

Also, you can retain the language on line 10, "at the time of adoption of this Rule." However, you do not need it. You can just end the sentence "no cost."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

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

2
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.
7 9.18, including later amendments and editions. This information is available at the U.S. Printing
8 Office website at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8)
9 [idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8)
10 at no cost at the time of adoption of this Rule.

11 (3) "State trust entity" shall mean a "state bank" or "state trust company" as defined in G.S. 53-
12 301(a)(43) and (45).

13 (4) "Trust business" shall have the same meaning as defined in G.S. 53-301(a)(50).

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: 04 NCAC 03D .0201

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, I understand that you are reciting G.S. 53C-8-3(a), which states:

§ 53C-8-3. Reports required of banks.

(a) Each bank shall file the following with the Commissioner, at such times, on such forms, and in such formats as the Commissioner may require:

- (1) Annual reports of conditions.
- (2) Periodic reports for interim periods within a year, not less than monthly in any case.

However, G.S. 150B-2(8a)d. states that forms must be in Rule if their contents are not in other rule or law. Where are the contents of these forms included in this Rule, including those specified on line 15, found?

On line 9, replace "which" with "that"

So that I am clear – the forms must be requested from the Office? They are not on your website?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

1 04 NCAC 03D .0201 is amended as published in 29:09 NCR 1043 as follows:

2
3 **04 NCAC 03D .0201 EXAMINING COMMITTEE REPORT REPORTS OF CONDITION OF STATE**
4 **TRUST DEPARTMENT ENTITIES**

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

11 Office of the Commissioner of Banks
12 316 West Edenton Street
13 4309 Mail Service Center
14 Raleigh, North Carolina 27699-4309.

15 Forms 29TC, 29A, and TARS® may be submitted electronically at:
16 <http://www.nccob.gov/Public/financialinstitutions/banks/banksff.aspx>

17
18 *History Note: Authority G.S. ~~53-83; 53-92; 53C-2-5; 53C-8-3; 53-366; 53-367;~~*
19 *Eff. February 1, 1976;*
20 *Amended Eff. April 1, 2015; September 1, 2006; September 26, 1979.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: 04 NCAC 03D .0302

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 8, I take it your regulated public knows what the legal prohibitions are?

In Rule 03D .0105 and line 9 of this Rule, "Board of Directors" is capitalized. It is used as "board of directors" elsewhere throughout this Rule. Which one is correct?

In (b)(1), line 17, "of such" seems to be unnecessary language. What is the purpose of it?

In line 18, please simply delete the extra space between "entity" and the apostrophe.

On line 19, I take it that the determination that these individuals are "qualified" and "competent" is by the board?

On line 20, delete the second "may" so the sentence reads, "... and it may designate and appoint such committees..."

On line 21, replace "and/or" with "or" (assuming you mean directors or officers or both).

In (b)(2), line 28, define "prompt"

On line 31, "such" seems to be unnecessary language. Do you need to retain it?

In (c), who determines "adequate" bonding?

In (d), who determines competency?

On Page 2, Paragraph (e), line 1, what are "negotiable and tangible assets"? I take it your regulated public knows?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

In (f), as you are citing to G.S. 53-163.1, I don't think you need "promptly" on line 5.

§ 53-163.1. Funds held by a trust institution awaiting investment or distribution.

(a) Funds held in a fiduciary capacity by a trust institution awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. A trust institution has complied with this requirement if such funds awaiting investment or distribution in excess of one thousand dollars (\$1,000) are invested or distributed within 30 days of receipt or accumulation thereof.

In (g), line 10, replace "must" with "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

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

2
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 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 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 be secured in the manner and to the extent required by G.S. 53-163.1 and G.S.
11 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; 53C-2-5; 53C-4-6;~~*
4 *53-163.1; 53-163.3; 53-356; 53-366;*

5 *Eff. February 1, 1976;*

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: 04 NCAC 03D .0303

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item 1, line 6, I take it your regulated public knows what "separate and distinct" means?

On line 8, I know "moneys" or "monies" is correct spelling of the term. I note that G.S. Chapter 53 uses "monies" and Chapter 53C uses "moneys." Is this the usual way your agency spells this?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

1 04 NCAC 03D .0303 is amended with changes as published in 29:09 NCR 1045 as follows:

2
3 **04 NCAC 03D .0303 BOOKS AND RECORDS; SURCHARGES RECORDS**

4 ~~(a) Books and Records. Each bank engaging in trust business must keep in the trust department:~~ state trust entity
5 shall keep the following:

- 6 (1) a separate and distinct set of books and records showing ~~in proper detail~~ all receipts and
7 disbursements of funds, receipts, purchases and sales of assets, and other transactions engaged in,
8 in connection with trust business; and showing at all times the ownership of all moneys, funds,
9 investments and property in that connection held by the ~~bank;~~ state trust entity;
10 (2) files containing the original instruments creating each trust or ~~properly~~ authenticated copies
11 ~~thereof;~~ [thereof;] copies; and
12 (3) a permanent record of minutes for each committee, showing ~~clearly its action.~~ actions. All
13 minutes shall be signed by the committee's chairman and ~~the Secretary and shall be read and~~
14 ~~approved at the next meeting of the committee.~~ its secretary.

15 ~~(b) Surcharges. Banks engaging in a trust business must also keep in the trust department a permanent record of~~
16 ~~surcharges. Any surcharge of one thousand dollars (\$1,000) or more must be expressly approved by the Trust~~
17 ~~Committee.~~

18
19 *History Note:* Authority G.S. 36A-71; 53-92; 53-110; 53C-2-5; 53-320(a); 53-366; 53-367;
20 Eff. February 1, 1976;
21 Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commissioner of Banks

RULE CITATION: 04 NCAC 03D .0304

DEADLINE FOR RECEIPT: Wednesday, March 11, 2015

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, I take the regulated public knows what is the extent permissible? And that it is set forth in law, rule, or regulation?

I understand the desire here to incorporate the CFR by reference; however, you already did so in Rule .0105 and do not need to do so again. If you'd like, you could remove the incorporation by reference in Rule .0105 and do it here. I'd suggest ending Paragraph (a) after "12 C.F.R. 9.18" and beginning Paragraph (b) with "12 C.F.R 9.18 is herein incorporated by reference, including all subsequent amendments and editions, and may be accessed at [url] at no cost. However, any reference in the regulation to "Comptroller of Currency" shall, for the purposes of state trust entities, be deemed to refer to the Commissioner of Banks."

Making this change would make the Rule clearer, I believe, and allow you to entirely replace the language in current Paragraph (b).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2015

1 04 NCAC 03D .0304 is amended with changes as published in 29:09 NCR 1045 as follows:

2

3 **04 NCAC 03D .0304 COLLECTIVE INVESTMENT**

4 (a) Funds held for trust business accounts by a ~~bank as fiduciary~~ state trust entity may be invested collectively in
5 one or more ~~common trust funds~~. collective investment funds to the extent permissible for the accounts. Such funds
6 shall be organized and administered in accordance with the provisions of 12 C.F.R. 9.18, the same which is herein
7 incorporated by reference except that any reference in the aforesaid statute to the Comptroller of the Currency shall,
8 for the purposes of ~~banks organized under the laws of North Carolina~~, state trust entities be deemed to refer to the
9 ~~Commissioners~~ Commissioner of Banks. This information is available at the U.S. Printing Office website at
10 http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8
11 at no cost at the time of adoption of this Rule.

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

14

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

16 *Eff. February 1, 1976;*

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