

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

487.14405 Investment of trust funds or property; "registered investment company" defined; bank considered as fiduciary.

Sec. 4405.

(1) A bank shall invest any money or property held by the bank as fiduciary and available for investment at the time and in the manner specified in the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, if the bank holds the money or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, the bank shall invest any money or property held by the bank as fiduciary within a reasonable time in real or personal property, of whatever type or nature, that a prudent investor would purchase, taking into account the purposes, terms, and distribution requirements expressed in the governing instrument, in the exercise of reasonable care, skill, and caution under conditions existing at the time of purchase. A bank's compliance with the prudent investor rule described in this subsection is determined in light of the facts and circumstances that exist at the time of the bank's decision or action as a fiduciary and requires a standard of conduct, not outcome or performance.

(2) A bank shall not invest any money or property held as fiduciary in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank unless 1 of the following applies:

(a) The investment is otherwise permitted by law, a court order, or the agreement, instrument, or order that creates or defines the trust or other fiduciary capacity in which the bank is acting.

(b) All interested parties or their representatives consent to the investment.

(c) The bank holds the money or property as an agent and the bank's principal directs or permits the investment.

(3) Except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment or transaction, a bank or a bank and 1 or more cofiduciaries may do any of the following with any money or property over which the bank or the bank and 1 or more cofiduciaries exercises investment discretion:

(a) Invest the money or property in a registered investment company even though either or both of the following apply:

(i) The bank or 1 or more affiliates of the bank provide services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receives reasonable remuneration for those services.

(ii) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of the investment company's directors or trustees.

(b) With the written consent of the revocable trust grantor or agency principal, or if the trust is irrevocable or the trust grantor is deceased or reasonably believed by the trustee to be incapacitated, after providing advance notice at least 45 days before the use of the money or property to any person then entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank, including, but not limited to, an insurance product or a security that is underwritten or distributed by the bank or an affiliate of the bank or by a syndicate or selling group that includes the bank or an affiliate of the bank, if the purchase price is reasonable. Any advance notice required under this subdivision shall list the type of products, services, or securities available for purchase from or through the bank or an affiliate of the bank and shall provide the name and address of an individual at the bank to whom a beneficiary receiving the notice may direct any objection. If the bank receives a written objection to a notice provided under this subdivision, and the objection is not resolved or withdrawn, the bank shall not use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank for at least 60 days after the bank receives the written objection. A bank or 1 or more affiliates of the bank may receive reasonable compensation in connection with the purchase of the product, service, or security under this subdivision.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(5) For purposes of this section, a bank is considered to hold funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2006, Act 581, Imd. Eff. Jan. 3, 2007

