COLLECTIVE INVESTMENT FUNDS ACT

Act 174 of 1941

AN ACT to authorize the establishment and the maintenance of common trust funds and collective investment funds; to authorize investments or participations in those funds; to define the requirements and terms of those funds, the conditions and terms governing investments or participations in those funds, and the admission and withdrawal of those investments or participations; to prescribe and define the rights, powers, and duties of banks, trust companies, fiduciaries, participants, beneficiaries, and other persons with respect to common trust funds and collective investment funds; and to provide for the regulation and supervision of those funds.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

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The People of the State of Michigan enact:

555.101 Short title; definitions.

Sec. 1.

(1) This act shall be known and may be cited as the "collective investment funds act".

(2) As used in this act:

(a) "Collective investment fund" means a fund maintained by a financial institution or by 1 or more affiliated financial institutions that consists solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income tax.

(b) "Common trust fund" means a fund maintained by a financial institution or 1 or more affiliated financial institutions exclusively for the collective investment and reinvestment of money contributed to the fund by the financial institution or the affiliated financial institutions in its capacity as a fiduciary or cofiduciary.

(c) "Fiduciary" means a financial institution or other person acting in the capacity of guardian, conservator, personal representative, or trustee, either solely or together with others, or custodian under a uniform gift or transfer to minors act of any state.

(d) "Financial institution" means any of the following:

(i) A state bank, national bank, state or federally chartered savings and loan association or savings bank that is authorized to act in a fiduciary capacity in this state.

(ii) A wholly owned subsidiary of an entity described in subparagraph (i) that is authorized to act in a fiduciary capacity in this state.

(iii) An entity authorized to act in a fiduciary capacity in any other state that is a member of an affiliated group within the meaning of section 1504 of the internal revenue code of 1986 that includes any of the entities described in subparagraph (i) or (ii).

(e) "Fund" means a common trust fund or a collective investment fund.

(f) "Plan" means the written plan for a fund described in section 4.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.101 ;-- Am. 1978, Act 433, Imd. Eff. Oct. 5, 1978 ;-- Am. 1984, Act 101, Imd. Eff. May 8, 1984 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.102 Funds; financial institution may establish, maintain, and administer.

Sec. 2.

A financial institution may establish, maintain, and administer 1 or more funds.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.102 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.103 Funds; financial institution may invest as fiduciary.

Sec. 3.

A financial institution in its capacity as a fiduciary or cofiduciary may invest funds that it lawfully holds for investment in that capacity in interests or participations in 1 or more common trust funds, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship and if, in the case of a financial institution in its capacity as a cofiduciary, the financial institution complies with any consent requirements imposed by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102. A financial institution may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts exempt from federal income tax that the financial institution holds in any capacity, including agent, in a collective investment fund.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.103 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

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555.104 Funds; establishment and maintenance of plan; provisions; availability for inspection.

Sec. 4.

(1) A financial institution shall establish and maintain a fund in accordance with a written plan approved by resolution of the board of directors of the financial institution or by a committee authorized by the board. The plan shall contain full and detailed provisions as to the manner in which the financial institution will operate the fund, including, but not limited to, provisions relating to all of the following:

(a) The investment powers and policies with respect to the fund.

(b) The allocation of income, profits, and losses.

(c) The fees and expenses that the financial institution will charge to the fund and to participating accounts.

(d) The terms and conditions governing the admission and withdrawal of participating accounts.

(e) Audits of participating accounts.

(f) The basis and method of valuing assets in the fund.

(g) The expected frequency of income distribution from the fund to participating accounts.

(h) The minimum frequency of valuation of fund assets.

(i) The period of time following a valuation date in which a valuation of fund assets must be made.

(j) The bases upon which the financial institution may terminate the funds.

(k) Any other matters necessary to define clearly the rights of participating accounts.

(2) A financial institution shall make a copy of a written plan described in subsection (1) available at its principal office for inspection during all regular business hours and shall provide a copy of the plan to any person who requests it.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.104 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.104a Audit; financial report; contents; items to be excluded from report; availability; advertising common trust fund.

Sec. 4a.

(1) At least once during each 12-month period, a financial institution administering a fund shall arrange for an audit of the fund by auditors responsible only to the board of directors of the financial institution.

(2) At least once during each 12-month period, a financial institution administering a fund shall prepare a financial report of the fund based on the audit required in subsection (1). The report shall disclose the fund's fees and expenses, a list of investments in the fund, the cost and current market value of each investment, and a statement covering the period after the previous report that shows all of the following, organized by type of investment:

(a) A summary of purchases, including costs.

(b) A summary of sales, including profit or loss and any other investment changes.

(c) Income to and disbursements from the fund.

(d) A description of any investments in default.

(3) A financial institution shall not publish in the report described in subsection (2) any predictions or representations as to future performance. In addition, with respect to common trust funds, a financial institution shall not publish the performance of individual funds other than those administered by the financial institution or its affiliates.

(4) A financial institution administering a fund shall provide a copy of the report described in subsection (2), or provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The financial institution may provide a copy of the report to prospective customers and may provide a copy of the report upon request to any person for a reasonable charge.

(5) A financial institution shall not advertise or publicize any common trust fund except in connection with the advertisement of the general fiduciary services of the financial institution.

History: Add. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.105 Common trust funds; funds investment.

Sec. 5.

A financial institution may invest and reinvest the assets of a fund in accordance with the plan for that fund.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.105 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

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555.105a Interest in fund other than fiduciary; prohibition; restrictions.

Sec. 5a.

(1) A financial institution administering a fund shall not have an interest in that fund other than in its fiduciary capacity. If, because of a creditor relationship or otherwise, a financial institution acquires an interest in a participating account, the financial institution shall withdraw the participating account from the fund on the next withdrawal date. However, a financial institution may invest assets that it holds as fiduciary for its own employees in a fund.

(2) A financial institution administering a common trust fund or a collective investment fund shall not make any loan secured by a participant's interest in the fund. An unsecured advance to a fiduciary account participating in the fund until the time of the next valuation date does not constitute the acquisition of an interest in a participating account by the financial institution.

(3) A financial institution administering a fund may purchase for its own account any defaulted investment held by the fund rather than segregating the investment as provided in section 8, if, in the judgment of the financial institution, the cost of segregating the investment is excessive in light of the market value of the investment. If a financial institution elects to purchase a defaulted investment, it shall purchase it for its market value or the sum of cost and accrued unpaid interest on the defaulted investment, whichever is greater.

History: Add. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

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555.106 Common trust funds; participation; certificate.

Sec. 6.

(1) A financial institution administering a fund shall not issue a certificate or other document representing a direct or indirect interest in the fund, except to provide a withdrawing account with a record of an interest in a segregated investment.

(2) An account owning or holding an investment or participation in a fund has a proportionate undivided interest in the fund's assets. The account does not have individual ownership of any asset in the fund.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.106 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.107 Common trust funds; management; control; ownership.

Sec. 7.

A financial institution has exclusive management and control of a fund administered by it and the sole right at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the assets comprising the fund. Exclusive management and control include, but are not limited to, the right to delegate responsibilities to others to the extent a fiduciary may

delegate responsibilities under the laws of this state. The ownership of assets in a fund by a financial institution is solely as a fiduciary.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.107 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.108 Common trust funds; assets valuation; admission and withdrawal; basis; distribution.

Sec. 8.

(1) A financial institution administering a fund that is not invested primarily in real estate or other assets that are not readily marketable shall determine the value of the fund's assets at least every 3 months. A financial institution administering a fund that is invested primarily in real estate or other assets that are not readily marketable shall determine the value of the fund's assets at least once a year. A financial institution administering a fund shall admit an account to or withdraw an account from the fund only on the basis of a valuation described in this section.

(2) A financial institution administering a fund may admit an account to or withdraw an account from the fund only if the financial institution has approved a notice for or a notice of intention of taking that action on or before the valuation date on which the admission or withdrawal is based. A request or notice shall not be canceled or countermanded after the valuation date.

(3) A financial institution administering a fund shall make distributions to accounts withdrawing from the fund in cash, ratably in kind, in a combination of cash and ratably in kind, or in any other manner consistent with applicable law in the state in which the financial institution maintains the fund. If an investment is withdrawn in kind from a fund for the benefit of all participants in the fund at the time of the withdrawal but the investment is not distributed ratably in kind, the financial institution shall segregate and administer the investment for the benefit ratably of all participants in the fund at the time of withdrawal.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.108 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.109 Common trust funds; management fee; expenses.

Sec. 9.

(1) A financial institution administering a fund may charge a reasonable management fee that does not exceed an amount equal to the value of legitimate services of tangible benefit to the participating accounts that would not have been provided to the accounts were they not invested in the fund.

(2) A financial institution administering a fund may charge reasonable expenses incurred in operating the fund.

(3) A financial institution shall pay the cost of establishing or reorganizing a fund.

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(4) A financial institution may deduct the fee and expenses allowed under subsections (1) and (2) from the fund or from the participating accounts in proportion to their interests in the fund.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.109 ;-- Am. 1986, Act 23, Imd. Eff. Mar. 10, 1986 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.110 Common trust funds; mistakes in administration; effect.

Sec. 10.

A mistake made in good faith and in the exercise of due care in connection with the administration of a fund is not a violation of this act or any rules or regulations issued under this act, if promptly after discovery of the mistake the financial institution takes whatever action is reasonable under the circumstances to remedy the mistake.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.110 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

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555.111 Common trust funds; rules regulating administration.

Sec. 11.

The commissioner of the office of financial and insurance services may promulgate and enforce rules regulating the administration of funds under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.111 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005
Popular Name: Common Trust Fund Act

555.112 Common trust funds; additional investments.

Sec. 12.

(1) In addition to investing assets in a fund, a financial institution may invest assets that it holds as fiduciary in any of the following, to the extent not prohibited by applicable law:

(a) In any of the following loans or obligations, if the financial institution's only interest in the loans or obligations is its capacity as fiduciary:

(i) A single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States or a single fixed amount security, obligation, or other property, either real, personal, or mixed, of a single issuer.

(ii) A variable amount note of a borrower of prime credit, if the financial institution uses the note solely for investment of funds held in its fiduciary accounts.

(b) In a fund maintained by the financial institution for the collective investment of cash balances received or held by a financial institution in its capacity as trustee, personal representative, executor, administrator, guardian, or custodian under a uniform gifts or transfers to minors act of any state that the financial institution considers too small to be invested separately to advantage. The total assets in a fund described in this subdivision shall not exceed $1,000,000.00 and the number of participating accounts shall not exceed 100.

(c) In any investment specifically authorized by the instrument creating the fiduciary account or in a court order, in the case of trusts created by a corporation, including its affiliates and subsidiaries, or by several individual settlors who are closely related.

(d) In any collective investment authorized by applicable law, including, but not limited to, an investment under a preneed funeral statute of any state.

(e) In any other manner described by the financial institution in a written plan approved by the financial institution's state or federal regulator. In order to obtain a special exemption, a financial institution shall submit to its regulator a written plan that sets forth all of the following:

(i) The reason that the proposed fund requires a special exemption.

(ii) The provisions of the proposed fund that are inconsistent with this act.

(iii) The provisions of this act for which the financial institution seeks an exemption.

(iv) The manner in which the proposed fund addresses the rights and interests of the participating accounts.

(2) For purposes of this section, a financial institution acts as a fiduciary if the financial institution acts as any of the following:

(a) A trustee, personal representative, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts or transfers to minors act of any state.

(b) An investment adviser, if the financial institution receives a fee for its investment advice.

(c) In any capacity in which the financial institution possesses investment discretion on behalf of another.

(d) In any similar capacity that a federal banking agency having authority over the financial institution may authorize from time to time.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.112 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005

Popular Name: Common Trust Fund Act

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555.113 Common trust funds; court accountings; jurisdiction of probate court.

Sec. 13.

Unless ordered by a court of competent jurisdiction, a financial institution administering a fund is not required to provide an accounting to a court with regard to the fund. By application to the state probate court with jurisdiction for a county in this state where the financial institution has its principal office, a financial institution may secure approval of an accounting under the conditions established by the court.

History: 1941, Act 174, Eff. Jan. 10, 1942 ;-- CL 1948, 555.113 ;-- Am. 2004, Act 586, Imd. Eff. Jan. 4, 2005

Popular Name: Common Trust Fund Act