



Bank Collective Trust Funds – “What You Need To Know”

San Francisco – September 10, 2008

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Contents

PowerPoint Presentation

Tab 1

Bank Collective Trust Funds
What You Need to Know

Tab 2

Collective Investment Funds of Banks and Trust Companies

BANK COLLECTIVE TRUST FUNDS: “WHAT YOU NEED TO KNOW”

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Agenda

- Part I
 - Overview
- Part II
 - Basic Elements
- Part III
 - Outsourcing
- Part IV
 - Operational Matters
- Part V
 - Questions & Answers

Part I: Overview

- The Current Environment
- An Inside Look at Collective Trusts
 - Documents
 - Structures
- Regulation

Terminology and Distinctions

- “Collective Investment Fund” – generic term
- “Collective Trust Fund”
 - Participants are limited to employee benefit trusts
 - Bank may act in any capacity for participating trusts
- “Common Trust Fund”
 - Participants typically – but not always – are personal or other non-employee benefit trusts
 - Bank must be trustee of each participating trust

Trends

- Popularity
- Change

Trend: Popularity

- Why?
 - Cost
 - Flexibility
 - “Comfort” Factor

Trend: Change

- Evolution
 - Wide Usage in Financial Services Industry
 - Adaptation of Other Fund Structures and Practices

What is a Collective Trust Fund?

- A common law **trust**
- Established by an institutional trustee
- To invest assets of employee benefit **trusts**
... a “trust of trusts.”

Anatomy of a Collective Trust Fund: Basic Documents

- Organizational Document (e.g., declaration of trust)
- “Fund” Document (e.g., supplemental or fund declaration)
- “Access” Document (e.g., trust agreement, adoption or participation agreement, etc. with each participating plan/trust)

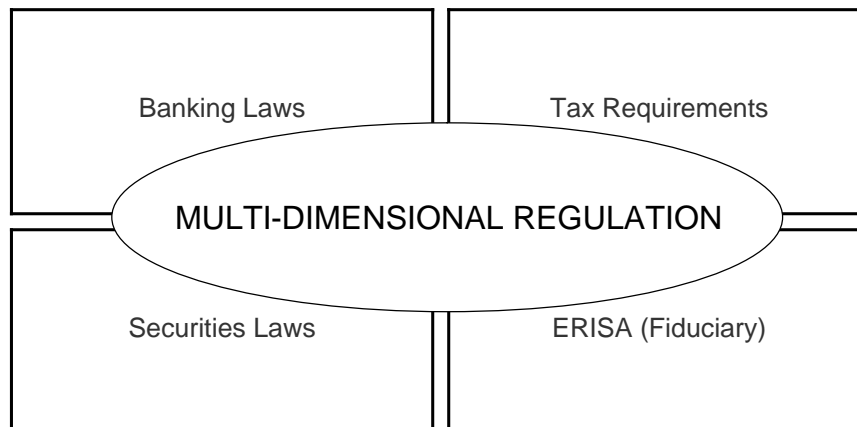
Anatomy of a Collective Trust Fund: Other (Optional) Documents

- Disclosure Materials
- Fund Service Provider Agreements
- “Platform” Agreement
- NSCC Fund/SERV Agreements

Anatomy of a Collective Trust Fund: Structures

- Open-end or closed-end
- Master/Feeder
- Fund-of-Funds
- Fee Structures: Fund-Level (Unit “Classes”) or Plan-Level

Collective Trust Funds: Regulation



Regulation: Banking Laws

- Regulation 9
 - Eligible trusts
 - Operational requirements
- State Laws
 - State laws govern, but . . .
 - Regulation 9 as “guideline”

Regulation: Tax Requirements

- IRS Revenue Ruling 81-100
 - tax-exempt “group trust”
 - limited to eligible employee benefit plans
 - “adoption” requirement
- IRS Determination Letter

Regulation: Federal Securities Laws

- Investment Company Act of 1940
 - Section 3(c)(11): Collective trust fund maintained by a bank, consisting solely of assets of certain eligible employee benefit plans, excluded from “investment company” status

- Securities Act of 1933
 - Section 3(a)(2): Interests in collective trust fund maintained by a bank are “exempted securities”

Regulation: ERISA

- Regulation of Transactions through Prohibited Transaction Restrictions

- Exemption for Plan Investments *in* Fund (ERISA Section 408(b)(8))

- Exemption for Transactions *by* Fund (PTE 91-38)

Part II: Basic Elements

- Collective trusts described in Regulation 9, Section 9.18(a)(2), Investment Company Act Section 3(c)(11), IRS Revenue Ruling 81-100, ERISA Section 408(b)(8) and PTE 91-38 include the following basic elements:
 - A “bank”
and
 - Trusts eligible to invest or participate in the fund

The “Bank” Requirement

- Regulation 9: applies to national banks; guideline for state-chartered banks
- IRS Revenue Ruling 81-100: no definition; no requirement of bank as trustee of a group trust
- Investment Company Act Section 3(c)(11): a collective trust fund must be maintained by a “bank”
- ERISA Section 408(b)(8), PTE 91-38: applies to common or collective trust fund or pooled investment fund maintained by a “bank”

What is a “Bank”?

- Investment Company Act Section 2(a)(5); DOL Interpretations under ERISA:
 - a national bank, a savings association, a state bank with FDIC-insured deposits or a branch or agency of a foreign bank
 - another banking institution or trust company
 - doing business under the state or federal law
 - which is supervised and examined by a bank regulator
 - a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers
 - which is not operated for the purpose of evading the Investment Company Act

Non-Depository Trust Companies

- National trust company (chartered by OCC)
- Federal thrift (chartered by OTS, but is FDIC insured)
- State trust company (chartered by State banking regulator)
- Status of trust companies under Bank Holding Company Act

Chartering a Non-Depository Trust Company

- Federal vs. state charter
- Federal options: bank or savings association
- Popular state charters: New Hampshire, Maine, Delaware
- Can be organized as LLCs in many states
- If trust company does not take FDIC-insured deposits, parent company is not subject to federal Bank Holding Company Act
- Parents of savings associations are subject to federal Savings and Loan Holding Company Act

Chartering a Non-Depository Trust Company (cont.)

- Practical Requirements
 - Capital: \$1,000,000 or more minimum (state); \$3,000,000 or more (federal)
 - Directors: at least five
 - Many states (including NH) do not require directors to be residents of the state where parent is out-of-state
 - Officers: banking/trust experience generally required
 - Location: “core” vs. “non-core” fiduciary activities; federal “preemption”

Chartering a Non-Depository Trust Company (cont.)

- Other considerations
 - Subject to banking regulation
 - Comprehensive policies and procedures required
 - Regulatory fees
 - Assessments
 - Examination fees and expenses
 - Applications do not present a high level of difficulty, but a fair amount of information is required

Eligible Trusts

- Plans qualified under Code Section 401:
(corporate, Keogh (Rule 180), Taft-Hartley)
- Governmental plans: described in Code and Securities Act Section 3(a)(2)
- Other group trusts or insurance company separate accounts that consist solely of Code Section 401 plans and eligible governmental plans

Eligible Trusts (cont.)

- The following types of plans/ retirement arrangements *generally* are *not* eligible to participate:
 - IRAs (Code Section 408)
 - Code Section 403(b) plans
 - Church plans not qualified under Code Section 401
 - “VEBAs”

Part III: Outsourcing Use of Affiliated and Third Party Advisors

- The “maintained by a bank” requirement of Investment Company Act Section 3(c)(11)
- Bank regulatory requirements – exclusive management subject to prudent delegation
- Historical perspective on these concepts
- Current regulatory landscape

Practical Implications

- Levels of control over portfolio management
- Use of dual employees
- Approved lists and review protocols
- Contractual provisions including indemnification and termination rights

Practical Implications

- Disclosure of outsourcing arrangements
- Bank internal resources and qualified personnel
- Compliance procedures – allocation between adviser and bank.

Outsourcing Other Services

- Distribution
- Fund Accounting
- Custody
- Compensation for service providers

Part IV: Operational Matters

Sales and Marketing

- No general solicitation/only to eligible Plan Sponsors
 - No mailing lists
 - No open web site
 - Focused/targeted sales to retirement assets
 - No published performance
- Subject to anti-fraud
- No FINRA
- States

Fee Structures

- Internal and External
 - Under Regulation 9 fee cannot be higher than if managed separately
 - Internal
 - Different unit classes with different fees
 - Can have performance fee subject to ERISA – fair and reasonable
 - External
 - Separately negotiated
 - Automatically paid out of redeemed units
 - Paid by Plan/Sponsor

Purchase/Redemptions

- Frequency
 - Daily or up to fund termination, but typically monthly
 - Costs
 - Errors
 - Systems limitations
 - Based upon portfolio valuation, but not necessarily tied to valuation
 - Redemptions
 - Daily or up to fund termination, but typically monthly
 - Costs
 - In-kind typically outside fund and pro rata for redemptions
 - Index products – under Regulation 9 can charge separate fee for trading costs

Purchase/Redemptions

- Valuation
 - Quarterly – readily marketable securities
 - Annually – illiquid securities
 - Process – Fair Value/FAS 157
 - 2a-7 like applicable only to STIF

Purchase/Redemptions

- Liquidation Account (wasting trust/sidepocket)
 - How it works
 - Regulation 9 permits buying defaulted investments
 - ERISA considerations
 - Trustee may buy portfolio securities with ERISA exemption
 - Trustee may loan money with interest free, non-secured loan

Oversight

- Bank or Trust Company Board of Directors
 - Responsibility of Board
 - Duty of care/loyalty
 - Compliance with trust documents
 - Overseeing service providers
 - Monitoring performance
 - Exercise through delegation
 - Quarterly Meetings

Affiliates

- Affiliate funds
 - ERISA Section 406
 - Fee issues
 - PTE-77-4
- Affiliated brokerage
 - ERISA 86-128

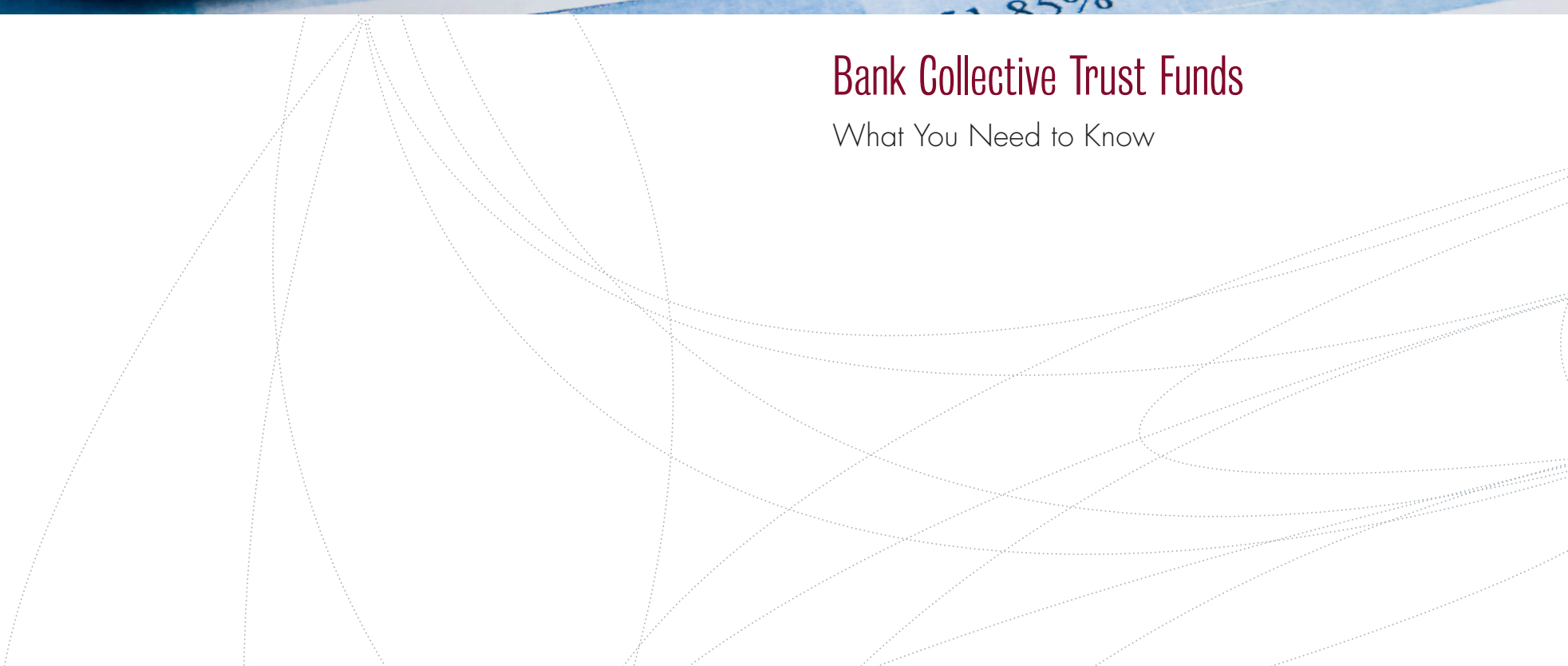
Part V: Questions & Answers

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Bank Collective Trust Funds

What You Need to Know



	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Primary Regulator(s)	Federal/State banking regulators; DOL	SEC	SEC DOL (if 'plan assets')	DOL SEC	Federal/State banking regulators DOL (if "plan assets")
Sponsor	Bank or trust company, as trustee	Investment adviser (registered under Advisers Act)	Investment adviser (might not be registered under Advisers Act ¹ or state law); but if fund assets are "plan assets," it normally would be expected to qualify as a "QPAM" ²	Investment adviser (might not be registered under Advisers Act or state law), but if fund assets are "plan assets," it normally would be expected to qualify as a "QPAM"	Bank or trust company, as trustee
Eligible Investors	Tax-qualified plans (IRC Section 401), including corporate and, subject to compliance with SEC Rule 180, Keogh plans Government plans [Not IRAs or health and welfare plans; issues presented as to whether 403(b) plans and church plans are eligible]	No limitations	"Accredited Investors" under the Securities Act "Qualified Purchasers" if fund relies on Section 3(c)(7) under Company Act "Qualified Clients" under Advisers Act, if adviser is registered under Advisers Act and performance fees are charged "Qualified Eligible Persons" under CEA, if commodities are part of the investment program	Tax-qualified plans (IRC Section 401), including corporate and, subject to compliance with SEC Rule 180, Keogh plans Government plans [Not IRAs or health and welfare plans; issues presented as to whether 403(b) plans and church plans are eligible] Investors also must be: "Accredited Investors" under the Securities Act "Qualified Purchasers" if fund relies on Section 3(c)(7) under Company Act "Qualified Clients" under Advisers Act, if adviser is registered under Advisers Act and performance fees are charged "Qualified Eligible Persons" under CEA, if commodities are part of the investment program	Personal trusts and estates Trusts established by institutions Provided, in all cases, the trusts are established for "fiduciary," and not solely for "investment" purposes

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Governance	Bank/trust company as trustee ("exclusive management" requirement under Regulation 9, subject to "prudent delegation")	Board of directors, generally, at least 40% of whom must be independent of adviser and sponsor	Managing member/general partner (if LLC/LP) Trustee(s) (if business trust)	Investment adviser Trustee normally is "directed trustee"	Bank/trust company as trustee ("exclusive management" requirement under Regulation 9, subject to "prudent delegation")
Investment Management	OCC: trustee must have "exclusive management" subject to "prudent delegation" of investment responsibility SEC: trustee must exercise "substantial investment responsibility"	Investment adviser must be registered under Advisers Act Investment advisory contract must be approved initially by investors and reapproved annually by directors	Managing member/general partner (if LLC/LP) Trustee(s) (if business trust) Separate investment adviser may be retained	Investment adviser	OCC: trustee must have "exclusive management" subject to "prudent delegation" of investment responsibility SEC: trustee must exercise "substantial investment responsibility"
Custodian	Trustee may retain affiliated or unaffiliated custodian, subject to prudent oversight	Qualified custodian must be appointed by investors and re-approved annually by directors Ordinarily, only bank or trust company will qualify as custodian Non-U.S. assets must be held by qualified foreign custodians	Brokerage firm and/or bank may act as custodian Adviser will be deemed to have "custody" under Advisers Act if it has access to client funds or securities (e.g., if it is general partner of partnership)	Brokerage firm and/or bank may act as custodian Adviser will be deemed to have "custody" under Advisers Act if it has access to client funds or securities (e.g., if it is general partner of partnership)	Trustee may retain affiliated or unaffiliated custodian, subject to prudent oversight
Application of ERISA	Fund assets considered "plan assets" under ERISA (and parallel prohibited transaction provisions of IRC Section 4975)	Fund assets not "plan assets" under ERISA	Fund assets considered "plan assets" under ERISA (and parallel prohibited transaction provisions of IRC Section 4975), if investment by "benefit plan investors" is "significant" (25% test)	Fund assets considered "plan assets" under ERISA (and parallel prohibited transaction provisions of IRC Section 4975), if any ERISA plan (or plan subject to IRC Section 4975) participates in fund	Fund assets considered "plan assets" under ERISA (and parallel prohibited transaction provisions of IRC Section 4975), if any ERISA plan (or plan subject to IRC Section 4975) participates in fund
Tax Considerations	Tax-exempt group trust under IRS Revenue Ruling 81-100 (determination letter normally requested)	Exempt from taxation, subject to compliance with Subchapter M under IRC Alternatively may be treated as partnership for tax purposes	May be treated as partnership for tax purposes (if not a "publicly traded limited partnership")	Tax-exempt group trust under IRS Revenue Ruling 81-100 (determination letter normally requested)	Tax-exempt "common trust fund" under IRC Section 584

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Required Minimum Capital by Sponsor	None	\$100,000	As necessary for partnership status (normally nominal)	None	None
Required Minimum Capital by Investors	Trustee discretion	Entity discretion	Entity discretion	Investment adviser discretion	Trustee discretion
Number of Investors	Unlimited	Unlimited	499 "qualified purchasers," if fund relies on Section 3(c)(7) of the Company Act 100 "accredited investors," if fund relies on Section 3(c)(1) of the Company Act	499 "qualified purchasers," if fund relies on Section 3(c)(7) of the Company Act 100 "accredited investors," if fund relies on Section 3(c)(1) of the Company Act	Unlimited
Resale/Transfer Limitations	Purchase/redemption only with trust	None if fund is "open-end" Interests in "closed-end" fund may be traded on exchange	Limited transferability, subject to LLC/partnership agreement	Purchase/redemption only with trust	Purchase/redemption only with trust
Marketing Limitations; Securities Act Registration	Not registered under Securities Act Anti-fraud restrictions apply Marketing to eligible plan sponsors	Generally registered under the Securities Act Marketing, distribution subject to FINRA requirements	Private placement under Securities Act Placement activities subject to FINRA requirements Exchange Act considerations for persons involved in placement activities	Private placement under Securities Act Placement activities subject to FINRA requirements Exchange Act considerations for persons involved in placement activities	May be marketed as part of bank's general fiduciary services
Investment Limitations	"Prudent" investments permitted under ERISA, subject to state banking laws	Entity Discretion, subject to Company Act diversification requirements and 15% maximum investment in illiquid securities	None, but subject to ERISA if fund assets are "plan assets" Subject to BHCA, if "bank holding company" "controls" fund (e.g., acts as managing member/general partner)	"Prudent" investments permitted under ERISA	"Prudent" investments permitted under state trust law or ERISA (if applicable), subject to state banking laws

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Open/Closed End	Trustee discretion However, valuation dates must occur no less frequently than quarterly or, in the case of a fund invested in real estate or other assets "that are not readily marketable," no less frequently than annually. Admissions and withdrawals must occur on a valuation as designated by trustee.	Entity Discretion	Entity discretion, subject to BHCA limitations on terms of periodic issuances and redemptions, if "bank holding company" (that is not qualified as a "Financial Holding Company") "controls" fund (e.g., acts as managing member/general partner)	Investment adviser discretion	Open-end only
Series Potential	Yes	Yes	Yes	Yes	Yes
Leverage	Permitted, subject to ERISA, applicable banking requirements	Borrowing generally not available for open-end funds, other than bank borrowing; debt for all registered funds is subject to 300% asset coverage; positions in futures, forwards, short sales, options, repurchase agreements, swaps, and other derivative instruments may be held if "covered" by offsetting positions or if cash or cash equivalents are segregated to offset the "leverage" (use of such instruments may also be limited by other regulatory restrictions)	No regulatory restrictions on borrowing, other than margin restrictions under Regulations T, U, and X and credit guidelines of counter-parties; no limitations on "leverage" created by commodities, forwards, short sales, options, repurchase agreements, swaps, and other derivative instruments (although use of such instruments may be limited by other regulatory restrictions); leverage may be of concern to tax-exempt entities (e.g., pension plans and foundations) because of "unrelated business taxable income"	Permitted, subject to ERISA	Permitted, subject to ERISA, applicable banking requirements
Performance Compensation	Should be permissible, subject to ERISA and applicable banking requirements	Generally not taken, but possible if "symmetrical" and investors are "qualified clients" under Advisers Act	Generally available; investors must be "Qualified Clients," if adviser is registered under Advisers Act	Should be permissible, subject to ERISA; investors must be "qualified clients" if adviser is registered under Advisers Act	Generally not taken; subject to applicable banking, trust law requirements

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Affiliate Transactions	<p>Generally prohibited under Regulation 9, subject to exceptions permitted under "applicable law"</p> <p>Generally prohibited under Section 406(b) of ERISA, unless an exemption applies</p>	<p>Generally may not engage in joint transactions with other funds under common management or engage in principal transactions between fund and adviser or affiliates under Section 17 of the Company Act; "crossing" positions and principal transactions between fund and adviser or affiliates also generally restricted under Section 206(3) of the Advisers Act without investors' consent</p>	<p>May engage in "joint transactions" with other investment funds under common management; "crossing" positions and principal transactions between fund and adviser or affiliates generally restricted under Section 206(3) of the Advisers Act without investors' consent</p>	<p>Generally prohibited under Section 406(b) of ERISA, unless an exemption applies</p>	<p>Generally prohibited under Regulation 9, subject to exceptions under permitted under "applicable law"</p> <p>If fund is subject to ERISA, generally prohibited under Section 406(b) of ERISA, unless an exemption applies</p>
Affiliated Brokerage	<p>Generally prohibited under Regulation 9, subject to exceptions permitted under "applicable law"</p> <p>Generally prohibited under Section 406(b) of ERISA, unless an exemption, such as PTE 86-128, applies</p>	<p>Must conform to limited exemption under Section 17(e) of the Company Act</p>	<p>Generally permitted with appropriate disclosure and subject to requirements of the Exchange Act</p>	<p>Generally prohibited under Section 406(b) of ERISA, unless an exemption, such as PTE 86-128 applies</p>	<p>Generally prohibited under Regulation 9, subject to exceptions permitted under "applicable law"</p> <p>If fund is subject to ERISA, generally prohibited under Section 406(b) of ERISA, unless an exemption, such as PTE 86-128, applies</p>

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
<p>Limitations at fund level on investing in other collective funds, investment companies, insurance company separate accounts for which fund is an eligible investor</p>	<p>Banking: generally permissible, subject to conflict of interest restrictions and “exclusive management” being retained by trustee</p> <p>Tax: generally permissible</p> <p>Securities: generally permissible, subject to “maintained” requirement</p> <p>ERISA: Generally permissible, subject to prohibited transaction restrictions and exemptions (e.g., PTE 77-4 for proprietary mutual funds)</p>	<p>Restricted under Section 12 of the Company Act</p> <p>Not eligible to invest in a Group Trust qualified under IRS Revenue Ruling 81-100</p>	<p>Generally unrestricted, but not eligible to participate in a Group Trust qualified under IRS Revenue Ruling 81-100</p> <p>Cannot acquire more than 3% of a registered investment company</p>	<p>Tax: generally permissible</p> <p>Securities: generally permissible</p> <p>ERISA: Generally permissible, subject to prohibited transaction restrictions and exemptions (e.g., PTE 77-4 for proprietary mutual funds)</p> <p>Cannot acquire more than 3% of a registered investment company</p>	<p>Investment in other common trust funds:</p> <p>Banking: generally permissible, subject to conflict of interest restrictions and “exclusive management” being retained by trustee</p> <p>Tax (IRC § 584): generally permissible</p> <p>Securities: cannot invest in common trust fund “maintained” by unaffiliated institution</p> <p>ERISA (if applicable): Generally permissible, subject to prohibited transaction restrictions and exemptions (e.g., PTE 77-4 for proprietary mutual funds)</p>

	Bank-Maintained COLLECTIVE Trust Fund (common law trust)	Registered Investment Company (corporation, business trust or partnership)	Private/Non-Registered Investment Fund (LLC, LP, business trust)	Non-Bank Maintained Group Trust (common law trust)	Bank-Maintained COMMON Trust Fund (common law trust)
Investment in Commodities	<p>For exchange-traded, regulated futures and commodities, trustee must be registered as a Commodity Pool Operator or be eligible for an exemption from registration (e.g., for de minimis trading under Rule 4.13(a)(3) or for “qualified eligible purchaser” pools under 4.13(a)(4) under the CEA); or eligible for an exemption from reporting requirements (e.g., Rule 4.7 under the CEA for certain “qualified eligible purchaser” pools.)</p> <p>For certain off-exchange transactions, must be an “eligible contract participant” (e.g., have total assets of greater than \$10 million or a guarantee of \$1 million made by certain eligible contract participants)</p>	<p>Under the Company Act, investing in commodities may create a “senior security” unless certain limits are followed (e.g., net assets plus borrowings and commodities futures contract obligations will equal at least 300% of commodities futures contracts; no more than 15% of net assets may be in commodities contracts)</p> <p>Must disclose in its registration statement whether it reserves the right to engage in the purchase and sale of commodities, and requires authorization by vote of majority of outstanding voting securities.</p> <p>Is by definition an “eligible contract participant” under the CEA.</p>	<p>For exchange-traded, regulated futures and commodities, trustee must be registered as a Commodity Pool Operator or be eligible for an exemption from registration (e.g., for de minimis trading under Rule 4.13(a)(3) or for “qualified eligible purchaser” pools under 4.13(a)(4) under the CEA); or eligible for an exemption from reporting requirements (e.g., Rule 4.7 under the CEA for certain “qualified eligible purchaser” pools.)</p> <p>For certain off-exchange transactions, must be an “eligible contract participant” (e.g., have total assets of greater than \$10 million or a guarantee of \$1 million made by certain eligible contract participants)</p>	<p>For exchange-traded, regulated futures and commodities, trustee must be registered as a Commodity Pool Operator or be eligible for an exemption from registration (e.g., for de minimis trading under Rule 4.13(a)(3) or for “qualified eligible purchaser” pools under 4.13(a)(4) under the CEA); or eligible for an exemption from reporting requirements (e.g., Rule 4.7 under the CEA for certain “qualified eligible purchaser” pools.)</p> <p>For certain off-exchange transactions, must be an “eligible contract participant” (e.g., have total assets of greater than \$10 million or a guarantee of \$1 million made by certain eligible contract participants)</p>	<p>For exchange-traded, regulated futures and commodities, trustee must be registered as a Commodity Pool Operator or be eligible for an exemption from registration (e.g., for de minimis trading under Rule 4.13(a)(3) or for “qualified eligible purchaser” pools under 4.13(a)(4) under the CEA); or eligible for an exemption from reporting requirements (e.g., Rule 4.7 under the CEA for certain “qualified eligible purchaser” pools.)</p> <p>For certain off-exchange transactions, must be an “eligible contract participant” (e.g., have total assets of greater than \$10 million or a guarantee of \$1 million made by certain eligible contract participants)</p>

* This chart contains highly abbreviated statements of a limited number of provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), the Investment Company Act of 1940 (“Company Act”), the Investment Advisers Act of 1940 (“Advisers Act”), the Securities Act of 1933 (“Securities Act”), the Securities Exchange Act of 1934 (“Exchange Act”), the Bank Holding Company Act of 1956 (“BHCA”) and other federal and state banking laws, the Internal Revenue Code of 1986 (“IRC”) and the Commodity Exchange Act (“CEA”) that are relevant to the choice of a U.S. domestic commingled investment vehicle. No attempt has been made to set forth all relevant legal considerations or provisions under these and other relevant laws or to address issues relating to the use of non-U.S. investment vehicles. This chart does not constitute, and should not be relied upon as, legal or tax advice. The application of each of the foregoing general statements will be affected by, and vary with, individual facts and circumstances.

Endnotes

- 1 Generally, an investment adviser is not required to register under the Advisers Act if it has had fewer than 15 clients in the preceding 12 month period and does not hold itself out generally to the public as an investment adviser.
- 2 In order to qualify as a QPAM under Prohibited Transaction Exemption 84-14 for a plan, an investment adviser must: (i) acknowledge in writing that it is a fiduciary with respect to the plan; (ii) be registered as an investment adviser under the Advisers Act; (iii) have shareholders’ or partners’ equity in excess of \$1,000,000 as shown in its most recent balance sheet prepared in accordance with U.S. GAAP; (iv) have more than \$85,000,000 in total client assets under management as of the last day of its most recent fiscal year. Additionally, the application of the exemption to particular transactions is subject to certain additional rules and exceptions.

Collective Investment Funds of Banks and Trust Companies



Bank collective investment funds – sponsored, maintained or advised by banks and trust companies– have played an important role in the investment management industry and market place for many decades. In recent years, bank collective trust funds, in particular, are experiencing a strong resurgence of popularity as investment vehicles of choice, particularly for participant-directed 401(k) plans.

The K&L Gates Investment Management practice provides full-service legal support to institutional clients involved in bank collective investment fund activities. Our clients include banks and trust companies as well as other financial services firms, such as investment advisers, broker-dealers, insurance companies, and other institutions that sponsor, maintain, and advise collective investment funds through bank or trust company affiliates or partners.

Our lawyers have experience as former inside counsel to banks and trust companies sponsoring major collective investment fund structures, regulators with relevant Government agencies, and private practitioners advising investment and financial institutions of a variety of types and sizes. Our experience enables us to provide effective, multi-disciplinary, practical advice on a wide range of regulatory and operational issues affecting collective investment funds, including, among other things, fund formation, product development, compensation matters, reorganization (including “conversion”), and termination.

We provide “one-stop” service to our clients to address the entire multi-dimensional regulatory scheme governing bank collective investment funds, including:

- Bank regulatory requirements (e.g., Regulation 9, state banking laws);
- Tax requirements (e.g., Internal Revenue Service Revenue Ruling 81-100, Internal Revenue Code Section 584);

- Federal securities law exceptions and exemptions under the Investment Company Act of 1940, Securities Act of 1933, Securities Exchange Act of 1934;
- Fiduciary standards and restrictions under the Employee Retirement Income Security Act and applicable state law.

We represent clients in all aspects of their dealings with the regulatory agencies, including with regard to routine examinations, applications for regulatory relief and enforcement-related issues. For example, we have experience with:

- Obtaining approvals from the Office of the Comptroller of the Currency for variances from Regulation 9 requirements (including the first OCC ruling authorizing national banks to operate closed-end collective investment funds);
- Assisting in client responses to bank regulatory examination deficiency letters;
- Obtaining prohibited transaction exemptions from the U.S. Department of Labor, including exemptions for collective trust fund-mutual fund “conversion” transactions and in-house plan “in-kind” redemptions from proprietary mutual funds;
- Obtaining Internal Revenue Service “group trust” determination letters.

We closely monitor legal and business trends and developments to help our clients remain competitive in a rapidly changing and evolving environment. Examples of traditional and “cutting edge” advice we have provided relate to:

- “Master-feeder” and “fund-of-funds” structures;
- Collective fund unit “class” structures to accommodate a variety of fee arrangements;
- Investment advisory arrangements between the sponsoring bank or trust company and affiliated or unaffiliated investment advisers;
- “Platform” arrangements under which employee benefit plans serviced by unaffiliated institutions access bank collective trusts;
- Collective trust fund disclosure documents;
- Collective investment funds designed to operate under the private investment company exclusions under the Investment Company Act of 1940;
- Transfers, reorganizations and restructuring of collective funds in connection with bank/trust company asset sales and other business transactions;
- Trust company formation under federal or state charters;

Above all, we pride ourselves on the customized service we provide our clients with respect to all aspects of our representation.

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