



## Ohio Revised Code

### Section 1111.13 Investing of trust funds.

Effective: January 1, 2007

Legislation: House Bill 416 - 126th General Assembly

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(A)(1) Except as provided in divisions (A)(2) and (G) of this section or as otherwise provided by the instrument creating the trust, a trust company acting as fiduciary under any instrument and having funds of the trust which are to be invested may, in addition to any other investments authorized to a trust company by law, invest them in any of the following:

(a) Forms of investments enumerated or described in, or made eligible for investment by, the Ohio Uniform Prudent Investor Act and sections 2109.37, 2109.371, 2109.372, and 5815.26 of the Revised Code, including, but not limited to, securities, stocks, bonds, or certificates of deposit issued by the trust company or any bank owned or controlled by the bank holding company that owns or controls the trust company.

(b) Any collective investment fund established and maintained by the trust company or by an affiliate of the trust company;

(c) The securities of any investment company, including any affiliated investment company, whether or not the trust company has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same investment company or affiliated investment company.

(2) A trust company acting as fiduciary may not invest its trust funds in stock issued by the fiduciary itself except under one of the following circumstances:

(a) In the case of a testamentary instrument, when expressly permitted by the instrument creating the relationship and authorized by court order;

(b) In the case of an inter vivos instrument, when expressly permitted by the instrument or authorized by court order and in either case, only when directed to purchase or invest in the stock by a cofiduciary or other person other than the trust company who has the right under the terms of



the instrument to direct the investment;

(c) When exercising rights to purchase its own stock or to purchase or convert securities convertible into its own stock if the rights were offered pro rata to the shareholders;

(d) To complement fractional shares acquired when the exercise of rights or receipt of a stock dividend results in fractional shareholdings.

(3) If the law or the instrument creating a trust expressly permits investment in direct obligations of the United States or an agency or instrumentality of the United States, unless expressly prohibited by the instrument, a trust company also may invest in no front end load money market mutual funds consisting exclusively of obligations of the United States or an agency or instrumentality of the United States and in repurchase agreements, including those issued by the trust company itself, secured by obligations of the United States or an agency or instrumentality of the United States, or in securities of other no load money market mutual funds whose portfolios are similarly restricted; and in collective investment funds established in accordance with section 1111.14 of the Revised Code or by an affiliate of the trust company and consisting exclusively of any direct obligations of the United States or an agency or instrumentality of the United States, notwithstanding division (A)(1)(c) of that section.

(B) A trust company acting in any fiduciary capacity or under any instrument has the right to retain any part of the trust or estate it receives, whether from the creator of the trust or the estate, at its inception or by later addition, or by addition by any other person who is authorized to make additions to the trust or estate, and any investments the trust company makes.

(C) Except as otherwise expressly provided by the instrument creating the fiduciary relationship, any trust company may exercise all voting, consenting, and dissenting rights, including the right to vote for the election of directors, pertaining to stocks, bonds, or other securities held by it in any fiduciary capacity, including rights pertaining to stocks, bonds, or other securities issued by the trust company in its individual corporate capacity and held by it in any fiduciary capacity, provided:

(1) In the case of any fiduciary relationship created prior to January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship, if exercised, shall



be exercised with respect to the election of directors, only in accordance with any provisions of law applicable to that election and without regard to the first paragraph of division (C) and divisions (C)(2)(a), (b), and (c) of this section, and those portions of division (C) of this section shall not be construed to be determinative of the voting rights or to be declaratory of a public policy with respect to the voting rights.

(2) In the case of any fiduciary relationship created on or after January 1, 1968, voting rights pertaining to any shares of a trust company's own stock held by it in a fiduciary relationship shall be exercised by it with respect to the election of directors, only if and as directed in writing by any person described in division (C)(2)(a), (b), or (c) of this section, provided that the person may not be the trust company, or a director, officer, or employee of the trust company except as to fiduciary relationships in which the director, officer, or employee is a settlor or beneficiary, or a nominee, agent, attorney, or subsidiary of the trust company:

(a) Any person, including a settlor or beneficiary, who has the right under the terms of the instrument under which shares are held to determine the manner in which shares shall be voted, or if there is no such person;

(b) Any person acting as cofiduciary under the instrument under which such shares are held, or if there is no such person;

(c) Any person, having the right of revocation or amendment of the instrument under which the shares are held.

(D) If there is more than one person having power to direct voting under division (C)(2)(a), (b), or (c) of this section and they fail to agree, each person shall have the right to direct voting with respect to the election of directors as to an equal number of shares.

(E) As used in this section:

(1) "Affiliated investment company" means any investment company that is any of the following:

(a) Sponsored by the trust company that is acting as fiduciary or by a trust company, bank, bank



subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(b) The result of any agreement with a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(c) Established exclusively for the customers or accounts of the trust company that is acting as fiduciary or of a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary;

(d) Provided with investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services by the trust company that is acting as fiduciary or by a trust company, bank, bank subsidiary corporation, or other corporation owned or controlled by the bank holding company that owns or controls the trust company that is acting as fiduciary.

(2) "Cofiduciary" includes, but is not limited to, a cotrustee, coexecutor, coadministrator, coguardian, co-agent, and any person who, under the terms of the instrument creating the fiduciary relationship, has the right or power to direct, approve or consent to, or be consulted with respect to, the making, retention, or sale of investments under the instrument.

(3) "Instrument" includes, but is not limited to, any will, declaration of trust, agreement of trust, agency, or custodianship, or court order creating a fiduciary relationship.

(4) "Reasonable fee" means compensation or payment, the receipt of which would not constitute a breach of fiduciary duty under section 36 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-35.

(F) Shares as to which the voting rights with respect to the election of directors may not be exercised under this section shall not be considered as outstanding for the purpose of computing the voting power of the corporation or of its shares of any class with respect to the election of directors.



(G) This section does not authorize a trust company acting as a probate fiduciary to perform any act prohibited by section 2109.44 of the Revised Code, unless the act is authorized by the instrument creating the trust.

(H) A trust company making an investment of trust funds in an affiliated investment company, or a bank or other corporation owned or controlled by the bank holding company that owns or controls the trust company, may charge a reasonable fee for investment advisory, brokerage, transfer agency, registrar, management, shareholder servicing, custodian, or any related services provided to an affiliated investment company. The fee may be in addition to the compensation that the trust company is otherwise entitled to receive from the trust, provided that the fee is charged as a percentage of either asset value or income earned or actual amount charged and is disclosed at least annually by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity.

(I) A trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section shall, when providing any periodic account statements to the trust fund, report the net asset value of the shares comprising the investment of the trust fund in the affiliated investment company.

(J) If a trust company making an investment of trust funds in the securities of an affiliated investment company pursuant to division (A)(1)(c) of this section invests the funds in any mutual fund, the trust company shall disclose, in at least ten-point boldface type, by prospectus, account statement, or any other written means to all persons entitled to receive statements of account activity, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.