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BANKING AND FINANCE

Trust Companies: Provide For Temporary Investment of Fiduciary Funds

CODE SECTIONS:	O.C.G.A. §§ 7-1-311 (amended), 7-1-315 (new)
BILL NUMBER:	HB 1162
ACT NUMBER:	1381
SUMMARY:	The Act provides statutory authority for current practices of trust companies relating to managed accounts, fees charged in connection with those accounts, and disclosure of such fees.
EFFECTIVE DATE:	July 1, 1988

History

On October 31, 1986, the Comptroller of the Currency, as regulator of national banks, cautioned against certain trust department practices involving "sweep cash management programs."¹ The Comptroller focused on the banks' practice of charging supplemental fees for the investment of fiduciary accounts in sweep programs because a potential conflict of interest exists when a fiduciary with investment discretion imposes a management fee without explicit authorization.²

Due to market and industry innovations, as well as the current capabilities of computer technology, trustees are able to invest more efficiently and increase the yield of smaller investments.³ The fiduciary duties of a trust company are defined by statute;⁴ in the absence of express statutory authorization, trustees could not be certain whether charging fees for systematic investment services violated their fiduciary obligations.⁵ HB 1162 clarifies the conditions under which a trust company satisfies its fiduciary obligations and duties regarding sweep accounts.

1. Comptroller of the Currency, Banking Issuance No. 218 (Oct. 31, 1986) [hereinafter Banking Issuance] (copy on file at *Georgia State University Law Review* office). The Issuance defines a "sweep cash management program" as a program for the systematic investment, in short-term investment media, of fiduciary cash balances which are awaiting investment or distribution. *Id.* at 1.

2. *Id.*

3. Telephone interview with Representative James Pannell, House District No. 122 (Mar. 31, 1988) [hereinafter Pannell Interview].

4. O.C.G.A. § 7-1-311 (1982 & Supp. 1988).

5. See Banking Issuance, *supra* note 1.

HB 1162

HB 1162 provides statutory authorization for bank trust departments to offer managed or sweep accounts and to charge a fee for these services as long as the fee is appropriately disclosed.⁶ The Act amends O.C.G.A. § 7-1-311, which establishes the parameters of a trust company's operations as a fiduciary, to allow a trust company to satisfy its fiduciary obligations by meeting the standards of the new Code section 7-1-315.⁷ The new section authorizes the investing of fiduciary funds awaiting investment or distribution⁸ and the charging of reasonable fees for the service.⁹ Fees and practices must be disclosed, and the disclosure may be accomplished if set forth in the company's periodic statements.¹⁰ If the investment is made through the commercial department of the trust company or through an affiliate bank, the rate of interest paid on the deposits must be at least equal to the rate paid on other deposits of similar terms and amounts.¹¹

With the exception of a technical House floor amendment, the bill was passed as introduced.¹² The bill was not opposed.¹³ The bill was intended to codify existing law concerning fiduciary trust companies rather than to change existing law.¹⁴

C. Henson

6. Pannell Interview, *supra* note 3.

7. O.C.G.A. § 7-1-311 (Supp. 1988).

8. O.C.G.A. § 7-1-315(b) (Supp. 1988).

9. O.C.G.A. § 7-1-315(c) (Supp. 1988).

10. O.C.G.A. § 7-1-315(d) (Supp. 1988).

11. O.C.G.A. § 7-1-315(b) (Supp. 1988).

12. *Id.* The amendment merely changed "depositions" to "deposits."

13. Pannell Interview, *supra* note 3.

14. O.C.G.A. § 7-1-315(e) (Supp. 1988).