

Fiduciary and Trust Governance – Are You Informing the Right People in the Right Positions About Fiduciary Risks?

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Disclosure

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12 CFR 9.4 Administration of fiduciary powers

§9.4 Administration of fiduciary powers.

- (a) *Responsibilities of the board of directors.* A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.
- (b) *Use of other personnel.* The national bank may use any qualified personnel and facilities of the bank or its affiliates to perform services related to the exercise of its fiduciary powers, and any department of the bank or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.
- (c) *Agency agreements.* Pursuant to a written agreement, a national bank exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another bank or other entity, and may purchase services related to the exercise of fiduciary powers from another bank or other entity.
- (d) *Bond requirement.* A national bank shall ensure that all fiduciary officers and employees are adequately bonded.

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Asset Management, Comptroller's Handbook, December 2000, Comptroller of the Currency, Administrator of National Banks

The board may establish formal committees to supervise asset management Activities. Committee membership and responsibilities should be clearly established, communicated, and periodically reviewed by the board and senior management. Committees should meet regularly and report to the board of directors. Significant actions taken by committees should be recorded in committee minutes, or in a similar record when performed by designated persons. Records should be reviewed, or be available for inspection, by the board. Board minutes should note such review, or that such records are available to directors for review.

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Fiduciary and Trust Governance

- Purpose / Principles of Corporate Governance
- Governance Structure, Process, Practice
- Practical Considerations in Effective Governance

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Fiduciary Governance Principles

Regulatory Oversight

- Chief federal regulator for banks' fiduciary businesses is the Office of the Comptroller of the Currency ("OCC"), a division of the United States Department of the Treasury.
- Corporate governance principles and OCC guidelines call for the establishment of appropriate structures in order to ensure effective oversight of national banks' fiduciary businesses.

Role of Board of Directors

- National bank directors are expected to retain and perform general supervision over the exercise of the bank's fiduciary powers.
- In discharging this responsibility, directors may assign administration of fiduciary powers as they deem proper to such directors, officers, employees, or committees as they may designate. Effective governance can be effected by delegation to subordinate committees, individual employees or a combination of both.
- Governance structure will depend on size, complexity and geographic diversity of the bank.
 - One size does not fit all

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Fiduciary Governance Principles

Goals of Fiduciary Governance Structure:

- Keep directors adequately informed;
- Implement board-approved strategic direction;
- Identify, control and monitor:
 - Transaction risk
 - Compliance risk
 - Strategic Risk
 - Operational risk
 - Reputation risk
- Develop policies that define risk tolerance and are compatible with strategic goals
- Ensure that the board's strategic direction and risk tolerances are communicated and adhered to throughout the organization

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Building a Corporate Governance Structure

Objectives:

- Create a single national governance structure which is directly accountable to support the duties of the Bank Board of Directors with respect to fiduciary activities as authorized by the National Bank Act and the OCC:
 - Understand and adopt the risk tolerance standards of the Bank
 - Adopt, implement and monitor the adequacy and effectiveness of the risk management system in achieving the Bank's strategic goals and financial objectives
- Ensure strategic focus through creation of senior fiduciary oversight committee populated with executives with broad span of control and expertise.
- Align bank fiduciary services by aligning fiduciary governance and accountability for risk/reward decisions through:
 - creation of business line specific committees, recognizing the distinct risk profiles of the primary service types (e.g. personal, institutional and philanthropic)
 - national fiduciary investment committee supporting all fiduciary service types
- This structure creates the forums by which common fiduciary risks can be viewed and assessed by all stakeholders through thoughtful cross-representation of business lines.

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When is a committee the “Right” structure?

- Focus on Purpose
 - Governance & Oversight v. Management
 - e.g. Board Trust committee v. Discretionary Distribution committee
- Do Committees serve some purposes better than others?
- How do decision-making models impact the effectiveness of committees?

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Challenges of Decision-making by Committee

- Poor decision-making dynamic
 - Lack of accountability
- Enforcement of decisions
- Weak communication protocol
- Poor follow-up

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Challenges of Decision-making by Committee: Discretionary Distribution Example

- Notoriously subject to local control
- Drives lack of accountability
- Alternative handling through tiered approvals
- Tiers based on dollar amount and/or nature of request
- Disadvantages of not having a committee
 - Lack of training
 - Free riding

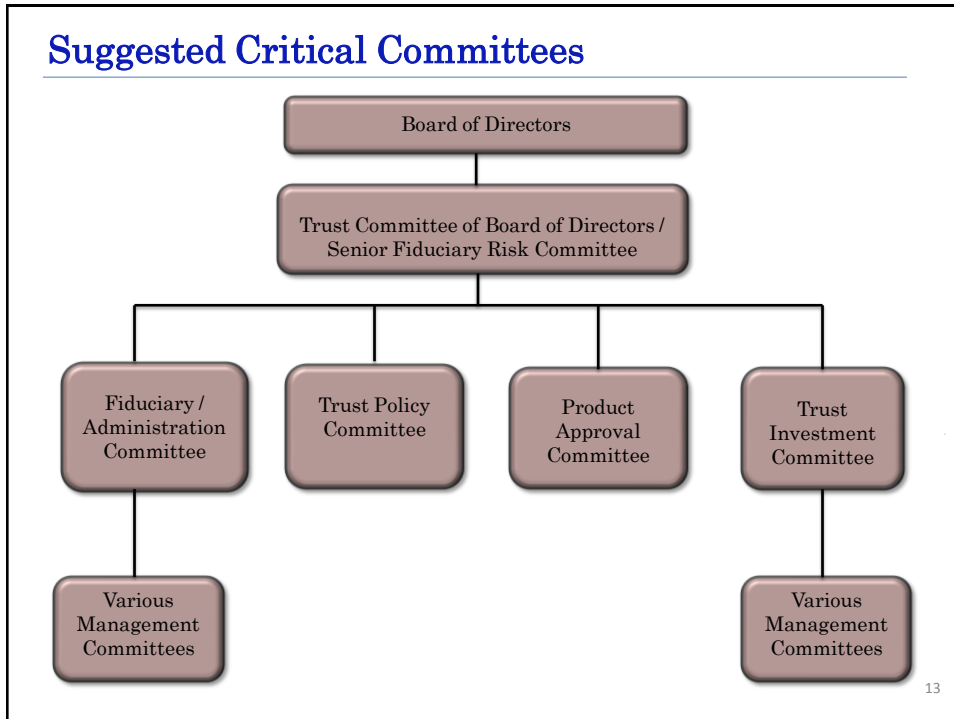
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Critical Committees

- Trust Committee – Governance
 - Can be Board Level
 - Can be Senior Management
- Fiduciary Administration – Governance / Management
 - Senior Management
- Fiduciary Investment – Governance / Management
 - Senior Management
- Product Approval / Management – Governance / Management
 - Senior Management

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Suggested Critical Committees



Committee Charters

Components

1. **Purpose**
 - Define the scope and depth of
 - Governance, oversight, management
2. **Authority**
 - Describe the source of the committee's authority
3. **Responsibilities**
 - Clearly articulate the scope of the charge
4. **Membership**
 - By role rather than individual
5. **Meeting and Reporting**
 - Meeting frequency
 - Reporting
 - Escalation
6. **Decision-making and Voting**

Committee Meeting Agenda

- Include meeting specific information
 - Date, time, location
 - Members, guests, presenters
- Standard items
 - Review and approval of minutes
 - New business
 - Old business
 - Open action items
- Consider schedule of periodic review items
 - Monthly, quarterly, annual
 - e.g. charter review and reapproval

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Committee Meeting Minutes

- Quality of minutes is critical
- Secretary must understand the subject matter and take detailed notes
- Detail and completeness of minutes
- Review by committee chair and support partners
- Approval by full committee
- Record Retention – Central Repository?

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Committee Membership

- Designation by functional role
 - Helps ensure appropriate expertise
 - Facilitates changes in personnel
- Multi-disciplinary
 - Different perspectives are critical
 - Avoid silos
- Appropriate seniority
 - Committee specific
 - Expertise specific
- Support partners
 - Legal, risk, compliance, audit
- Voting and non-voting members

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Decision-making and Voting

- Quorum requirements
- Number of voting members
- Input of non-voting members
- “Super” votes
 - Is there a single role on committee that can veto?
- Support partner voting
 - Risk
 - Compliance
 - Legal
 - Audit
- Tolerance of / demand for debate and dissent

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Monitoring of Governance Effectiveness

- Self-Assessment
 - Membership review
 - Qualitative assessment of performance
- Enterprise Assessment
 - Independently Administered
 - Select Key Committees
 - Fiduciary Investment
 - Product Management
 - Fiduciary Administration
 - Proxy
 - Key Metrics
 - Meeting Frequency
 - Voting Member Attendance
 - Decision-making
 - Escalation
 - Overall Qualitative Assessment