

losses, unless the investments are proper and permitted in the trust instrument. This section also prohibits any corporate fiduciary from purchasing securities from itself.

In some instances, a company may choose to assume the responsibility for the investment of the funds. Here the bank is under the duty of following the instructions of the company. We believe that the company, in exercising the investment function under a trust instrument, assumes a fiduciary responsibility and its acts must be judged by the same high standards as a bank. The officers and directors of the company may find themselves personally liable, and action can be brought by stockholders as well as employees. Similarly, investment advisers selected by a company to manage trust funds will also find themselves governed by fiduciary standards. Where the bank does not manage investments, nevertheless it continues to be responsible for the proper accounting and safekeeping of the assets.

PAYMENTS OF BENEFITS

In the majority of the employee benefit trusts, the bank as trustee makes the benefit payments directly to the employees or their beneficiaries. In pension plans, the company usually certifies to the bank that the employee is eligible for payments and determines the amount of pension or other benefit to be paid. In profit sharing and savings plans, the procedure is similar except that the bank frequently maintains the record of the accounts of employees and makes the determination of the amount payable. In those cases where the bank does not make payment of benefits, the bank transfers funds to the retirement committee or other committee of the company, which makes payments. They continue to be fiduciary funds in the hands of the committee, and the committee, we believe, has the same responsibilities as a bank trustee has in the proper distribution of the funds.

Upon receipt of the certification by the company, the bank assumes the obligation for proper payment. If a mistake is made in paying (1) the wrong amount, or (2) the wrong person, the bank is required, pursuant to long-standing trust practice, to reimburse the trust for any unrecoverable loss. Also, the trust is protected against loss due to forgeries.

SUMMARY

In summary, bank trustees are held to a high degree of fiduciary conduct. Banks are closely controlled and governed by well-established statutes and by internal, Federal and State audits, examinations, and procedures. Significant penalties are imposed upon banks when they commit a breach of trust or fail to comply with Government requirements. Financial statements of each trust fund are rendered to the company, to the Treasury Department, and to the Labor Department. In considering the need for additional legislation in the areas of disclosure, audits, and financial data, we respectfully suggest that existing controls of bank trustees be recognized.