§ 100-c. Common trust funds. 1. For the purpose of investment and reinvestment of moneys received and held by any trust company as executor, administrator, guardian, trustee, donee of power during minority to manage property vested in an infant, custodian under any Uniform Gifts to Minors Act, any Uniform Transfers to Minors Act or The New York Uniform Transfers to Minors Act, conservator or committee, such trust company may establish and maintain common trust funds and short term investment common trust funds. In any case where the instrument or the order, decree or judgment under which such moneys are held does not forbid, such trust company, either alone or in conjunction with one or more other persons acting with it in any fiduciary capacity, may invest and reinvest such moneys or any part thereof by adding the same to any such common trust funds and short term investment common trust funds. Such trust company shall have the same power to invest common trust funds in securities of any management type investment company or investment trust, registered pursuant to the federal investment company act of nineteen hundred forty, as is set forth in, and subject to the provisions of, sections 11-2.2 and 11-2.3 of the estates, powers and trusts law.

2. Notwithstanding any other provision of law, a trust company may deposit securities investments of a common trust fund, or arrange for the deposit of such investments through a subcustodian, (a) with a clearing corporation pursuant to EPTL 11-1.9, (b) with a federal reserve bank pursuant to EPTL 11-1.8, or (c) with a securities depository, clearing agency, or bank, whether or not subject to the laws of a jurisdiction other than the United States of America, or any state or subdivision thereof, for the account of the trust company and such investments shall be deemed for the purposes of this section to be in the custody of such trust company.

3. A common trust fund shall not be deemed a separate trust fund on which commissions or other compensation is allowable and no trust company maintaining such a fund shall make any charge against such fund for the management thereof. Provided, however, that in those instances where a trust company invests common trust funds in securities of any management type investment company or investment trust pursuant to the

provisions of subdivision one of this section, such trust company may charge the common trust fund for the fees and expenses of such securities pursuant to and consistent with the provisions of sections 11-2.2 and 11-2.3 of the estates, powers and trusts law.

4. If money of an estate, trust or fund or any part thereof held by a trust company in conjunction with one or more other persons in any fiduciary capacity is invested in a common trust fund, the participating interest therein so acquired shall be withdrawn therefrom upon the written request of any such other person acting in such fiduciary capacity with such trust company.

5. If any investment held in a common trust fund shall cease to be eligible as a new investment of such common trust fund, the trust company maintaining the common trust fund, prior to any further additions to or withdrawals from such fund, either shall sell such investment or shall set the same apart in a liquidating account for the benefit ratably of each participant then interested in such common trust fund.

6. At least once every ten years, each trust company maintaining a common trust fund shall file an account of its proceedings in respect thereof either in the office of the clerk of the supreme court or in the office of the surrogate in any county in which such trust company maintains an office.

Upon the filing of the petition for the settlement of such account, the court shall assign a time and place for a hearing on the settlement of such account and order notice thereof by: (a) one publication not less than twenty days prior to the date of such hearing, of a notice in a newspaper to be designated by the court, and (b) mailing on or before the day of publication a copy of the notice to all persons whose names and addresses appear, at the close of the period accounted for, upon the records maintained by the trust company pertaining to the common trust fund as well as to any estate, trust or fund, any part of which shall have been invested in the common trust fund and who at the close of the period accounted for were known by such trust company to be or to claim

to be included in any of the following classes of persons: (i) those who at any time during the period accounted for were entitled to share in the income of any estate, trust or fund invested in the common trust fund at any time during the period accounted for; (ii) those who became entitled to share in the principal of any estate, trust or fund invested in the common trust fund which became distributable in whole or in part during the period accounted for; (iii) those who at the close of the period accounted for would have been entitled to share in the principal of any estate, trust or fund invested in the common trust fund if the event upon which such estate, trust or fund would become distributable in whole or in part had occurred at the close of the period accounted for, provided, however, that in the case of a trust which at the close of the period accounted for can be revoked in its entirety in favor of and by the grantor, donor, trustor or creator, it shall not be necessary for such trust company to include the names and addresses of any persons interested in the principal of such trust other than the grantor, donor, trustor, or creator; (iv) those living at the close of the period accounted for who had any interest in the income or principal, or both, of any estate, trust or fund invested in the common trust fund, and who prior to the close of the period accounted for shall have notified the trust company in writing to send a copy of the notice or citation of any proceeding for the settlement of any account or the trustee of such common trust fund to such person at an address furnished to the trust company by such person; (v) those who at any time during the period accounted for were acting with the trust company in a fiduciary capacity with respect to any such estate, trust or fund; (vi) the guardian of any infant, the committee of any incompetent and the conservator of any conservatee included among the persons hereinbefore described; (vii) the personal representative of any deceased person included among the persons hereinbefore described in class (i), (ii), (iii), or (v).

Upon the filing of such petition, the court shall appoint a person to appear as guardian ad litem for each person who has or who may thereafter have any interest in the income of such common trust fund and a person to appear as guardian ad litem for each person who has or who may thereafter have any interest in the principal of such common trust fund. Each such interested person may appear in such accounting

proceeding and on his failure to appear shall be deemed to be represented in such proceeding by the person designated respectively as such guardian ad litem.

Except as otherwise herein provided, such proceeding shall be conducted in the same manner as any other proceeding for the voluntary judicial settlement of the account of a testamentary trustee. The decree in such proceeding shall be thereafter binding and conclusive in respect of any matter embraced in the account or in such decree upon all persons having or who may thereafter have any interest in such common trust fund or in any participating estate, trust or fund.

7. As used in this section, subject to subdivision eight of this section the term "trust company" shall mean any trust company, any bank duly authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers; the term "estate" shall mean the assets held by an executor or an administrator, with or without the will annexed, of the goods, chattels and credits of a decedent, but not a temporary administrator; the term "trust" shall mean the assets of any trust however created held by the trustee thereof, including, but without limitation, any assets held by a fiduciary as donee of a power during minority to manage property vested in an infant; the term "fund" shall include the assets of an infant held by the guardian thereof, the assets of an incompetent person held by the committee thereof, and the assets of a conservatee held by the conservator thereof. The term "donee of a power during minority to manage property vested in an infant" shall for the purposes of this section include only a fiduciary who has power during a period measured by a minority to hold and invest moneys under the terms of an instrument under which the fiduciary had theretofore held such moneys as executor or as personal or testamentary trustee.

8. (a) A trust company, at least ninety per centum of the capital stock of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by a bank holding company may establish and maintain one or more common trust funds and short term investment common trust funds, or may utilize one

or more common trust funds and short term investment common trust funds previously established by it, for funds held in any of the fiduciary capacities mentioned in subdivision one of this section, by itself and by other trust companies at least ninety per centum of the capital stock of each of which is directly or indirectly, or through a subsidiary or subsidiaries, owned, controlled or held with power to vote by such bank holding company. Each trust company, the capital stock of which is so owned, controlled or held, may invest and reinvest in one or more of such common trust funds and short term investment common trust funds moneys held in any of the fiduciary capacities mentioned in subdivision one of this section. The trust company establishing, maintaining, or so utilizing any such common trust funds and short term investment common trust funds shall comply with, and be subject to, all of the provisions of this section as though such trust company and the other trust companies participating in such fund were one and the same corporate entity.

(b) For the purpose of this subdivision, (i) the term "bank holding company" shall be given the same meaning as is contained in the definition of such term in section one hundred forty-one of this chapter, and (ii) the term "trust company" shall be given the same meaning as is contained in the definition of such term in subdivision seven of this section, except that such term shall be deemed to include, in addition to the entities listed in such subdivision, any banking, trust or financial company, corporation or association, organized under the laws of the United States, whether or not having its principal office outside this state, or of any state of the United States, which is duly authorized to exercise fiduciary powers.

9. (a) As used in this subdivision, unless the context otherwise required:

(i) "Short term investment common trust fund" means a common trust fund maintained and administered by a trust company exclusively for the collective investment and reinvestment of moneys contributed thereto which are invested and reinvested in any short term investment by a trust company, in its capacity as a fiduciary or co-fiduciary.

(ii) "Short term investment" means bonds, notes or other evidences of indebtedness which are payable upon demand (including variable amount

notes) or which have a maturity date of one year or less from the date of purchase, or which may be prescribed, from time to time, by rules or regulations promulgated by the superintendent of financial services, and which are acquired or held by a trust company in a short term investment common trust fund.

(iii) "Participant" means any estate, trust, donee of a power during minority, guardianship, committeeship, conservatorship, or custodian under any Uniform Transfers to Minors Act administered by a trust company, as fiduciary or co-fiduciary, having a participation.

(iv) "Participation" means the interest of a participant in a short term investment common trust fund.

(b) Any trust company may administer one or more short term investment common trust funds.

(c) Any trust company shall, at least once each year, cause an audit of each short term investment common trust fund administered by the trust company to be made by auditors who are independent certified public accountants. A copy of such audit shall be available at the office of the trust company maintained for the transaction of trust business, during all regular business hours, for inspection by any person having an interest in any participant, and upon request a copy of any such audit shall be furnished without any cost to such person. The reasonable expenses of any such audit made by independent certified public accounts or of any examination by the superintendent may be charged to the income of the short term investment common trust fund.

(d) A trust company administering a short term investment common trust fund shall not be required to render a court accounting with regard to such fund.

10. The superintendent of financial services shall promulgate such regulations and rules as he or she considers appropriate to govern the administration of common trust funds and short term investment common trust funds.