POLICY STATEMENT CONCERNING THE CONDUCTING OF TRUST BUSINESS BY NON-DEPOSITORY ENTITIES IN SOUTH CAROLINA

The South Carolina Board of Financial Institutions ("Board") issues the following policy statement regarding the activities of non-depository[1] entities which constitute conducting trust business in South Carolina.

S.C. Code Ann. § 34-21-10 provides as follows:

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. … [P]rovided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

I. Entities For Whom Prior Board Approval is Required

Per this section, prior Board approval to conduct a trust business is required for any "corporation, partnership or other person," which includes, but is not limited to limited liability companies ("LLC's"), non-profit corporations,[2] and any other entity that is not a "natural person." Similarly, where an individual purports to conduct trust business by, through, and/or as agent for any entity that is not a "natural person," that entity must obtain prior Board approval, unless otherwise exempt from doing so.

II. Activities Which Constitute Conducting A Trust Business

The Board interprets the phrase "conduct a trust business" as used in S.C. Code Ann. § 34-21-10, to include acting as trustee of a trust (as defined by S.C. Code Ann. § 62-1-201(49)), executor, administrator, or personal representative (as defined by S.C. Code Ann. § 62-1-201(33)), guardian (as defined by S.C. Code Ann. § 62-5-101(9)), conservator (as defined by S.C. Code Ann. § 62-1-201(6)), managing agent (as defined in S.C. Code Ann. § 34-21-210(7)). Additionally, serving as an agent (as defined by S.C. Code Ann. § 62-8-102(1)), also constitutes conducting a trust business.

---

[1] In order to avoid confusion regarding the various approval requirements for depository institutions with trust powers, the Board issues this guidance specifically to provide clarity for non-depository institutions. This guidance shall not be construed to negate or otherwise modify the approval and regulatory requirements for depository institutions conducting trust business.

[2] Note, however, the narrow exception that allows a nonprofit corporation to serve as "a trustee of a trust in which it has a beneficial interest" without prior Board approval. S.C. Code § 33-31-302(9).

The Board further interprets the phrase "conduct a trust business" to include holding oneself out as providing or offering the act of serving in these fiduciary roles to the public in South Carolina.

In addition to these explicitly defined fiduciary roles, the Board acknowledges that there exists a broad range of fiduciary activities[3] which might constitute conducting a trust business. This guidance does not constitute a comprehensive list of activities which constitute trust business. The Board strongly advises entities to contact the Office of the Commissioner of Banking with questions regarding whether specific activities constitute conducting a trust business.

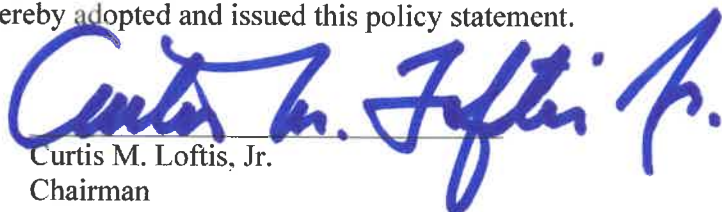
III. When Board Approval is Required for Entities Approved to Conduct a Trust Business in Other States

A non-depository entity approved to conduct a trust business in another state must obtain prior Board approval in order to conduct a trust business in South Carolina, as defined above, prior to maintaining a physical location in South Carolina, or undertaking operations in South Carolina which necessitate obtaining a Certificate of Authority from the South Carolina Secretary of State pursuant to S.C. Code Ann. § 33-15-101.

Entities approved to conduct a trust business in other states seeking to obtain approval to conduct a trust business in South Carolina should note that the Board has entered into the Conference of State Bank Supervisors Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions ("CSBS Agreement"). If the entity's home state supervisor has also entered into this Agreement, prior written approval from the Board is still required; however, the Board will follow the approval procedures set forth in the CSBS Agreement, to the extent permitted by South Carolina law.

An entity approved to conduct a trust business by another state will only be approved to conduct trust business in South Carolina in the same manner, and with the same powers and limitations under which the entity has been approved in that entity's home-state, and only to the extent such powers are allowed by South Carolina law.

On this 1 day of June 2022, the Board hereby adopted and issued this policy statement.



Curtis M. Loftis, Jr.
Chairman
South Carolina Board of Financial Institutions

[3] The Board does not consider accountants, attorneys, investment advisors, real estate brokers or sales agents, or securities brokers or dealers, when acting as agents for their respective firms, to be engaged in conducting trust business with respect to fiduciary activities which are customarily performed as a necessary and traditional incident to their regular business activities, so long as the individuals are licensed to take such actions in South Carolina through their respective licensing authorities.