

P-99-4-B

Date: April 20, 1999.

Summary Conclusion: OTS took a no-action position under the Change in Bank Control Act and OTS Acquisition of Control Regulations with regard to a person appointed a successor individual trustee without such person providing prior notice in connection with the indirect acquisition of control of a federal savings bank, provided certain conditions are met.

Subjects: Home Owners' Loan Act/Savings Association Powers; Savings and Loan Holding Companies/Change in Control.



Office of Thrift Supervision
Department of the Treasury

P-99-4-B

Chief Counsel

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

April 20, 1999

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Re: Requirement for Prior Notice in Connection with
Appointment of Successor Individual Trustees of
Trusts

Dear []:

This letter is in response to your letter of January 25, 1999, requesting that the Office of Thrift Supervision ("OTS") staff advise you that it will not recommend enforcement action against any person who is appointed a successor individual trustee of a Trust (defined below) without such person providing prior notice to the OTS in connection with the indirect acquisition of control of [] ("Savings Bank").

Based on the facts and circumstances set forth in your request, the previously filed holding company application, and your letters dated June 22, 1998, and October 9, 1998, regarding a prior request, please be advised that the OTS staff will not recommend that enforcement action be taken under the Change in Bank Control Act ("CBCA") and the OTS Acquisition of Control Regulations ("Control Regulations") with respect to the successor individual trustee of a Trust, provided that: (i) either [] Trust Company ("[TC]") or [] ("[Bank]") already serves as a trustee to such Trust; and (ii) each such individual trustee files a notice under the Control Regulations within forty-five (45) days after the end of the calendar year in which such person is appointed a successor individual trustee, and provides such additional information as the OTS may specifically request. Notwithstanding the foregoing, proposed successor individual trustees who are not trustees of a Family Trust as of the date of this letter, or who have not filed a change of control notice with the OTS with respect to becoming a successor individual trustee of a Family Trust, must file a change of control notice with the OTS prior to becoming a trustee of one or more Family Trusts controlling an aggregate of more than 10 percent of the common interests of [LLC]. The OTS retains the authority to disapprove the successor individual trustee as a controlling person upon consideration of the information.

I. Background

On [], by Order No. [], the OTS approved the indirect acquisition of a controlling interest in the Savings Bank by, inter alia, [

[] LLC (“[LLC]”), [] Trusts and one charitable foundation (collectively, the “Trusts”), and certain other persons and entities (collectively, the “Applicants”).

The stock of a predecessor entity of [LLC] was originally owned by [], who transferred his stock equally to his [] children. [] children transferred most of their stock to trusts for the benefit of their descendants. All of the descendants (including adopted children) are referred to as the “Family Members” and are the remaindermen and income beneficiaries of the Trusts. Presently, there are approximately [] Family Members who are receiving or are eligible to receive income from the Trusts. Each successive generation of Family Members has created trusts for the benefit of descendants or for charitable purposes, *i.e.*, the Trusts. The Trusts own all of the common membership interests of [LLC]. Only one Trust owns more than 10 percent of the outstanding common interests of [LLC]. The trust agreements and agreements under which [LLC] operates were described briefly in our letter of [].

Most of the trust agreements provide for the appointment of successor individual trustees in the event of the resignation, death, or refusal or inability to serve of the current individual trustees. The trust agreements generally give the individual trustees the power to appoint successor individual trustees by means of a written instrument. If a resigning individual trustee does not name a successor individual trustee, the trust agreements provide that the corporate trustee is to appoint a successor individual trustee. While the corporate trustee can be changed, you represent that, as a practical matter, it is unlikely such an event will occur. The trust agreements do not grant any beneficiary the power to appoint any successor trustees. You represent that any appointment of a successor individual trustee would be undertaken pursuant to the written action of the then-current trustee and would not be within the control of the successor individual trustee. You note that the Applicants would continue to control the Savings Bank, and either [TC] or [Bank], acting as the corporate trustee to the Trusts, would continue to control the investments of the Trusts.

You request that we advise you that we would not recommend enforcement action against any person who is appointed a successor individual trustee of a Trust without such person providing prior notice to the OTS, provided that: (i) either [TC] or [Bank] already serves as a trustee to such Trust; and (ii) each such individual trustee files a notice under the Control Regulations within forty-five (45) days after the end of the calendar year in which such person is

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appointed a successor individual trustee, and provides such additional information as the OTS may specifically request. The OTS would retain the authority to disapprove the successor individual trustee as a controlling person under applicable standards. If the OTS disapproves the successor individual trustee, the person would resign.

I. Response

On the basis of the foregoing facts, the facts represented to us in the holding company application and your prior letters, we would not recommend that enforcement action be taken against any person who is appointed a successor individual trustee of a Trust without such person providing prior notice to the OTS, provided that: (i) either [TC] or [Bank] already serves as a trustee to such Trust; and (ii) each such individual trustee files a notice under the Control Regulations within forty-five (45) days after the end of the calendar year in which such person is appointed a successor individual trustee, and provides such additional information as the OTS may specifically request. The OTS retains the authority to disapprove the individual trustee as a controlling person under applicable standards. If the OTS disapproves the successor individual trustee, the person must resign. Notwithstanding the foregoing, proposed successor individual trustees who are not trustees of a Family Trust as of the date of this letter, or who have not filed a change of control notice with the OTS with respect to becoming a successor individual trustee of a Family Trust, must file a change of control notice with the OTS prior to becoming a trustee of one or more Family Trusts controlling an aggregate of more than 10 percent of the common interests of [LLC].

Our position set forth herein is based upon your representation that any new successor individual trustee would not affect significantly the control or affect the safety and soundness of the Savings Bank. Any circumstances that arise concerning a successor individual trustee that may be considered to alter significantly the control of the Savings Bank (as control is defined in the applicable statutes and regulations administered by the OTS), to jeopardize the safety and soundness of the Savings Bank, or to impair OTS' ability to supervise or to regulate the Trusts as savings and loan holding companies, would cause the staff to reconsider, and potentially to withdraw, the position taken herein and possibly take other appropriate action. Finally, if any successor individual trustee has been appointed to a Trust after the OTS approval of the Applicants' holding company application, but prior to issuance of this letter, without filing a notice under the Control Regulations, the provisions of this letter may not be regarded as addressing such action and the OTS retains the authority to take such actions as it deems appropriate.

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Should you have any questions regarding the above matters, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457.

Sincerely,

Kevin A. Corcoran

Kevin A. Corcoran
Acting Deputy Chief Counsel
Business Transactions Division

cc: Regional Director
Regional Counsel
Caseload Manager
Central Regional Office

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