Office of Thrift Supervision
Department of the Treasury
Chief Counsel
1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6251

March 28, 1996

[redacted]

RE: Interstate Trust Business

Dear [redacted]

This responds to your inquiry submitted on behalf of [redacted] (the "Association"), concerning whether the Association may provide trust services through agency offices of the Association that will be located in states where the Association does not have its main office or a branch office. You have also asked for guidance regarding what state laws will be applicable to the trust services provided at those agency offices.

In brief, we conclude that the Association, with approval from the Office of Thrift Supervision ("OTS"), may exercise trust powers through agency offices located in any state that authorizes state banks or other companies to act as fiduciaries. The trust powers that may be exercised from any such office will be the same as the trust powers authorized by that state for state banks and other companies. Certain other state laws will also apply to the trust business of the Association. A general overview of how state and federal law interact in the trust area is provided in the discussion below.

I. Background

The Association, a federal savings bank, is an indirect subsidiary of [redacted] ("Holding Company"), a registered bank holding company. By letter dated [redacted] the OTS authorized the Association to exercise in [redacted] its home state, "those corporate trust powers that are authorized by the State of [redacted]." The letter further provided that the Association's exercise of corporate

trust powers "through offices located in additional states is subject to prior approval by the [redacted] Regional Director, or his designee."[1]

The Holding Company has entered into a definitive agreement with [redacted] an [redacted] bank holding company ("Seller"), pursuant to which one or more Holding Company subsidiaries will acquire the corporate trust business of various subsidiaries of Seller having trust offices located in [redacted]. Presently, the Holding Company and the Association anticipate that the Association will acquire all or substantially all such corporate trust businesses.

After the acquisition, the Association proposes to conduct the following corporate trust activities in each of the respective states in which the acquired trust businesses have offices, to the extent allowed by the law of each state: bond trustee, calculation agent, collection agent, corporate agent, escrow agent, fiscal agent, investment manager, issuing agent, paying agent, registrar of bonds, transfer agent, master trustee, tender agent, collateral agent, custodian, and miscellaneous corporate fiduciary capacities similar to the above. Association personnel in each jurisdiction will have corporate authority pursuant to appropriate standards and delegations by the Association's board of directors to enter into certain types of trust agreements, to accept appointment to certain corporate trust positions, and to carry out (under the supervision of the board) the activities required in the trust business.

A manager at each corporate trust office will be responsible for the day-to-day administration of that office's corporate trust accounts. The Association will enter into a Corporate Trust Agency Agreement with [redacted] ("Bank"), another subsidiary of the Holding Company, pursuant to which Bank will provide various centralized administrative and operational services for the corporate trust accounts for a service fee. Such services, to be performed at the Bank's office located in [redacted] will include, among other things, investing available funds pursuant to the governing corporate trust instruments, sending confirmations on executed trades, performing all corporate trust account recordkeeping functions, preparing and mailing account statements to corporate trust customers, preparing and filing required tax reports, publishing redemption and other required notices, and fee billing and fee collection services.[2]

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[1] Letter dated [redacted] from [redacted] Regional Director OTS [redacted] Region, to [redacted]

[2] See OTS Op. Chief Counsel (Nov. 22, 1995) (federal savings associations are authorized to contract with affiliates for investment management and advisory services).

The Holding Company has entered into a Services Agreement with Seller, dated [redacted] which deals with certain transition issues relating to the purchase and the transfer of the corporate trust accounts. Pursuant to the Services Agreement, the Association will be permitted to remain in Seller's existing corporate trust offices for up to two months following the closing of the transaction.

The Association anticipates that it may, after obtaining the necessary approvals from the OTS, expand its corporate trust activities into additional states. On [redacted] the Association was authorized to conduct personal trust activities in its home state and has applied for permission to exercise personal trust powers through an agency office in [redacted] In addition, the Association may, in the future, seek to expand both the type and location of its trust activities.

The Association does not currently plan to accept deposits in any of the seven states where it seeks to provide corporate trust services through agency offices. The Association may at some future time decide to expand its activities in one or more of these states to include the acceptance of deposits and other banking activities, at which time it would seek approval to establish one or more branches in that state. Until then, however, the Association wishes to conduct its trust operations through agency offices.

II. Discussion

In the discussion that follows, we will first address the permissible geographic scope of the trust operations of federal thrifts, then whether trust operations may be conducted from agency offices. Next we will discuss the types of trust powers that may be exercised. Lastly, we will provide an overview of the interaction of federal and state law in the trust area.

A. Permissible Geographic Range of Trust Business

Section 5(n)(1) of the Home Owners' Loan Act ("HOLA") provides as follows:

> The Director [of OTS] may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with

> Federal savings associations are permitted to act under the laws of the state in which the Federal savings association is located.[3]

Thus, the OTS is authorized to permit federal thrifts to exercise trust powers in any state that allows state banks, trust companies, or other corporations to act as fiduciaries. We have not read HOLA § 5(n) to require an institution to establish non-fiduciary operations in a state before it can be deemed "located" there for trust purposes. In fact, we have concluded that offices that provide trust services can suffice to establish location.[4] As we have previously noted,

> the mere presence of a branch office in a particular state does not ensure that a trust operation is conducted appropriately, and it would make little sense to interpret the statute to require an association to open a branch in a state as a prerequisite to conducting trust operations in the state.[5]

We also have previously concluded that federal thrifts may provide trust services from offices located in more than one state. In other words, the fact that a federal thrift has established a trust location in one state does not prevent it from establishing trust locations in other states.[6]

The Office of the Comptroller of the Currency ("OCC"), which interprets a virtually identical trust powers provision for national banks, has reached similar conclusions, recognizing that a national bank may conduct fiduciary business through

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[3] 12 U.S.C.A. § 1464(n)(1) (West Supp. 1995).

[4] OTS Op. Chief Counsel (May 5, 1995) ("May 1995 Op.). A federal savings association is not deemed to be "located" in a state where it merely markets its services or has customers. Id. at 5, n.13. See section II.C. below for a fuller discussion of the permissible scope of trust powers.

[5] Id. at 4.

[6] OTS Op. Chief Counsel (December 24, 1992) ("December 1992 Op."). We have considered whether the statutory reference to "the state" (singular) in which a federal thrift is located should be read as implying that a federal thrift can exercise trust powers in only one state. The general rule of construction is that statutory terms in the singular form may apply to multiple objects. 2A Sutherland Statutory Construction § 47.34 (5th ed. 1992). See also, 1 U.S.C.A. § 1 (West 1985). We see no reason to depart from that standard rule of construction in this instance. At the time HOLA § 5(n) was enacted, very few federal thrifts had established an interstate presence. Use of the singular in HOLA § 5(n) thus appears to have been descriptive, rather than prescriptive. We are aware of no evidence that Congress intended to restrict the trust operations of federal thrifts to a single state. Such a restriction would be at odds with the authority of federal thrifts to expand all other aspects of their operations, including their branch networks, nationwide.

non-branch trust offices in more than one state.[7] The legislative history of HOLA § 5(n) indicates that Congress intended to give federal thrifts the ability to offer trust services on the same basis as national banks.[8]

Accordingly, we conclude that federal thrifts with OTS approval may establish trust operations in any state that authorizes state banks, trust companies or other corporations to act as fiduciaries.

B. Providing Trust Services Through Agency Offices

The Association proposes to provide trust services through, inter alia, the agency offices described above. An agency office is a limited purpose office of a federal savings association. No geographic restrictions are placed on the location of agency offices.[9]

Agency offices are expressly excluded from the regulatory definition of a "branch office"[10] of a federal thrift because agency offices are not permitted to provide the full range of services available at a branch. In particular, OTS regulations provide that the OTS may not authorize agency offices to engage in certain deposit-related activities.[11] However, the regulations indicate that agency offices may be authorized to engage in any other activity that could be performed at a depository office of a federal thrift. Thus, trust services fall within the ambit of what the OTS can approve for agency offices.

This conclusion is consistent with HOLA § 5(n). Although HOLA § 5(n) contains detailed requirements and restrictions,[12] none of those restricts the type of office or the business structure that a federal thrift may utilize when providing trust services. Moreover, as noted above, the legislative history of HOLA § 5(n) indicates

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[7] OCC Interpretive Letter No. 695 (Dec. 8, 1995), at 13-14.

[8] S. Rep. No. 368, 96th Cong., 2d Sess. 13, reprinted in, 1980 U.S. Code Cong. & Admin. News 236, 248.

[9] OTS Op. Acting Chief Counsel (June 13, 1994) (concluding that the OTS could approve an application by a federal thrift to establish a foreign agency office to provide clearinghouse services to support its U.S.-based institutional trust operations). See also 54 Fed. Reg. 50613 (Dec. 8, 1989).

[10] 12 C.F.R. § 545.92(a) (1995).

[11] 12 C.F.R. § 545.96(b) (1995).

[12] See section II.D. below for a fuller discussion of these requirements and restrictions.

that its purpose was to give federal associations the ability to offer trust services on the same basis as national banks. The OCC has indicated that national banks may provide trust services through limited purpose trust offices.[13] Thus, authorizing federal thrifts to provide trust services through agency offices appears to further Congress' objective.

Accordingly, we conclude that federal thrifts may provide trust services through agency offices. Of course, the Association's agency office application is subject to review and approval by OTS's [redacted] Regional Office. Here we merely address the general legal issues raised by your letter of inquiry.

C. Permissible Scope of Trust Powers

HOLA § 5(n)(1) makes clear that the scope of fiduciary powers that a federal thrift can be authorized to exercise from a trust office located in any particular state are tied to the fiduciary powers authorized for "state banks, trust companies, or other corporations which compete with Federal savings associations under the laws of the state in which the Federal savings association is located."[14] Thus, we must ascertain where a federal thrift's trust operations are "located" for purposes of HOLA § 5(n) to determine what state's or states' laws will define the permissible scope of its fiduciary powers.

OTS's trust regulations provide that a federal thrift's trust activities must be "authorized for state-chartered fiduciaries by the laws of each state in which the Federal savings association has offices from which it will offer fiduciary services."[15] Thus, OTS's regulations are based on the premise that a federal thrift will be located, for trust purposes, in each state where it operates a trust office. This is consistent with past OTS interpretive opinions.

In 1992, we opined that a federal thrift that proposed to provide trust services from branch offices located in states other than its home state would be deemed to be located in each of those branch states for trust purposes.[16] Similarly, in 1995, we opined that a federal thrift that proposed to cause its operating subsidiary to acquire, own, and operate a trust business would be deemed to be "located" for purposes of

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[13] OCC Interpretive Letter No. 695 (Dec. 8, 1995).

[14] 12 U.S.C.A. § 1464(n)(1).

[15] 12 C.F.R. § 550.2(c)(2) (1995).

[16] December 1992 Op.

HOLA § 5(n) in the state where the trust office was situated, rather than in the thrift's home state.[17]

The conclusions reached in these opinions are consistent with the purposes that underlie HOLA § 5(n)(1). The practical effect of finding that an association is located in a state for purposes of HOLA § 5(n)(1) is that the association's trust operations become subject to the laws of that state to the extent indicated in this opinion. The policy that underlies this rule is competitive parity between state and federal fiduciaries.[18] In our view, a federal thrift that establishes offices in a state to provide trust services will be in a position to compete fully with state fiduciaries. It follows, therefore, that the scope of the thrift's fiduciary powers should be determined by the laws of that state, so as to preserve competitive parity. Thus, we conclude that the Association's trust business will be deemed to be located in the various states in which it operates agency offices providing trust services.[19]

We note that the OCC has reached a similar conclusion. The OCC has determined that, at a minimum, a national bank is "located" in those states where it provides fiduciary services at trust offices.[20]

D. Federal and State Law Applicable to the Exercise of Trust Powers

You have also asked us to confirm your conclusion that, while the scope of a federal association's fiduciary powers in each state where the Association is located under HOLA § 5(n)(1) is limited by the laws of that state, the "operations" of the Association's trust business are subject "to regulation, supervision, and examination by the OTS and not by state regulators." Beyond this, you do not provide any details regarding the types of state laws you wish us to confirm to be preempted.

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[17] May 1995 Op.

[18] See S. Rep. No. 368, 96th Cong., 2d Sess. 13 reprinted in, 1980 U.S. Code Cong. & Admin. News 236, 248. See also St. Louis County National Bank v. Mercantile Trust Co. N.A., 548 F.2d 716, 720 (8th Cir. 1976), cert. denied, 433 U.S. 909 (1977); and Blaney v. Florida National Bank at Orlando, 357 F.2d 27, 30 (5th Cir 1966).

[19] The OTS has noted that the term "located" as it appears in HOLA §§ 4(g) and 5(n) should be interpreted in a consistent manner. June 1994 Op. at 4-5; December 1992 Op. at 8-9. But this does not necessarily mean that an association is "located" for § 4(g) purposes in every state where it is "located" for § 5(n) purposes. Consistency means, inter alia, that the location concept should be applied in each statute in a manner that furthers their different policy objectives.

[20] OCC Interpretive Letter No. 695, at 14, n. 7 (Dec. 8, 1995).

The trust operations of federal thrifts are subject to a complex interplay between federal and state law. On the one hand, HOLA § 5(a) grants the OTS plenary authority to regulate all aspects of the operations of federal savings associations, including trust operations.[21] Section 5(n)(1) of the HOLA expressly confers upon the OTS the power to authorize federal savings associations to exercise trust powers.[22] Thus, the OTS has opined that any state law that would require a license or prohibit the performance of trust powers by federal thrifts conflicts with the express authority of the OTS and is preempted.[23] Moreover, HOLA § 5(n)(2) indicates that whereas state banking authorities may have access to the portions of exam reports prepared by the OTS that relate to a federal thrift's trust operations, the OTS retains exclusive authority to conduct those exams.[24] Consistent with its role as exclusive regulator, the OTS has promulgated detailed trust regulations addressing matters such as: the procedures for obtaining trust powers; requirements for the deposit of securities; responsibilities of the board of directors; procedures for accepting fiduciary accounts; asset review procedures; use of association personnel; legal counsel; bonding requirements; procedures for maintaining the books and records for the trust department; audit requirements; investment of funds; self-dealing; and termination of trust powers.[25] Any state law that conflicts with any of these regulations would clearly be preempted.

On the other hand, as explained above, HOLA § 5(n) indicates that the OTS must look to state law to determine the scope of the trust powers that may be granted to a federal thrift in each location state. The HOLA also specifically incorporates certain other state laws. For example, the HOLA specifies that the OTS may not grant trust powers to a federal thrift if the thrift has less capital than is required under state law for state chartered fiduciaries.[26] Pursuant to the HOLA, a federal thrift's

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[21] 12 U.S.C.A. § 1464(a) (West Supp. 1995).

[22] 12 U.S.C.A. § 1464(n)(1).

[23] June 1994 Op. at 8-10. See also, OTS Op. Chief Counsel (Jan. 9, 1990) (imposition of annual license fee by a state authority is preempted). The OCC has also taken the position that state licensing requirements are preempted as applied to national bank trust activities. OCC Letter dated July 19, 1994 by Ellen Broadman.

[24] 12 U.S.C.A. § 1464(n)(2) (West Supp. 1995).

[25] 12 U.S.C.A. § 1464(n) (West Supp. 1995) and 12 C.F.R. Part 550 (1995).

[26] 12 U.S.C.A. § 1464(n)(8) and 12 C.F.R. § 550.2(b)(1) and (c)(1).

trust business must also comply with any state law requiring a deposit of securities[27] and an oath or affidavit from trust fiduciaries.[28] In addition, a federal thrift is subject to applicable state laws relating to trusts, estates, and so forth. For example, state probate law prescribes the standards of conduct of an institution acting as executor in that jurisdiction.[29]

As the foregoing illustrates, both federal and state law play important roles in governing the trust operations of federal thrifts. If the Association needs guidance beyond the general observations made above, it should provide specific examples of the types of state laws that it wishes us to address.

In reaching the foregoing conclusions, we have relied upon the factual representations made in the materials you submitted to us and in subsequent discussions, as summarized herein. Our conclusions depend upon the accuracy and completeness of those facts. Any material difference in facts or circumstances from those described herein could result in different conclusions.

If you have any questions regarding these matters, please feel free to contact Dorene Rosenthal, Counsel (Banking and Finance), at (202) 906-7268.

Very truly yours,

Carolyn J. Buck
Chief Counsel

cc: Regional Directors
Regional Counsel
[redacted]

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[27] 12 U.S.C.A. § 1464(n)(5). The OTS has concluded that the amount of securities that federal savings associations are required by HOLA § 5(n)(5) to deposit in any state with a deposit requirement that is computed as a percentage of total trust assets administered by the fiduciary should be computed by federal thrifts on the basis of total trust assets administered from offices located in that state. December 1992 Op. at 11-13.

[28] 12 U.S.C.A. § 1464(n)(6).

[29] OTS Trust Activities Handbook, § 130 at 75 (1992).