

# A First Look at New Hampshire's New Trust Company Laws

By W. John Funk

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**New Hampshire has completely re-written the laws governing New Hampshire-chartered trust companies in 2015. Chapter 272 was signed into law on July 27, 2015. Effective October 1, 2015, a new regulatory scheme will be in place. The purpose of this article is to explain its provisions as they apply to trust companies.**

Trust companies are regulated by the New Hampshire Bank Commissioner, who heads the New Hampshire Banking Department that is located in Concord, New Hampshire. Previously, the regulation of trust companies was tied into the same laws that applied to all banks. Companies engaged solely in a trust business were known as “nondepository” trust companies. (See previous articles on [Nondepository Trust Companies](#) and [NH Family Trust Companies](#).)

Under the new law, these types of companies are still classified as “banks,” but are now simply

called “trust companies.” They are subject (i) to certain general provisions that apply to all banks in a new chapter RSA 383-A and (ii) to specific provisions that apply only to trust companies in a new chapter RSA 383-C.



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## Executive Summary

The Bank Commissioner and the banking department have been regulating “nondepository” trust companies for over 25 years and have developed a great deal of experience. The new laws have improved the efficiency of their regulatory functions and have created a favorable environment for the organization of new trust companies in New Hampshire. The banking department now has a separate trust company division and its own division head. This development has been coupled with significant improvements in the trust laws of the state so that New Hampshire is now recognized as one of the most attractive places in the United States to conduct a trust business.

For new trust companies, the process for organizing a company has been streamlined, capital and pledge requirements have been reduced and the powers of trust companies have been clarified. Organizers should plan on a 4- to 6-month process and to submit a capital plan, business plan and personal financial information on the principals.

For existing trust companies, requirements regarding meetings of board members have been made more flexible, regulatory processes have been simplified and there is greater clarity on a range of issues involving safety and soundness standards, changes in ownership and control, office locations, combinations of trust companies and foreign trust companies.

The commissioner is in the process of implementing changes to how the department covers its costs (it is funded by the regulated entities) by bringing per diem rates for examinations in line with actual costs and reducing the general assessment so that each company more closely bears the cost of its expense to the department.

Changes have also occurred to pledge requirements (to cover the cost of a liquidation of a trust company) by eliminating the surety bond and replacing it with a pledge of funds at a bank located in New Hampshire. The department is in the process of issuing new regulations and forms to implement the new laws.

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## A. REGULATION OF TRUST COMPANIES

RSA 383-A governs the organization, capital, bond and insurance coverage, management, regulatory approvals and enforcement procedures that apply to all banks. The purpose of this chapter is to have one set of requirements for banks for purposes of simplicity; however, individual chapters that apply to different types of banks, such as RSA 383-C for trust companies, may provide for exceptions.

**1. Organization.** A trust company may be organized by one or more persons as a corporation or a limited liability company. The provisions of the corporations or limited liability company laws will apply to trust companies, except for certain filing and reporting requirements as provided in RSA 383-A or RSA 383-C.

*a. Application.* An application is filed with the commissioner together with a \$10,000 filing fee. The organizational instruments, a proposed capital plan, a proposed 5-year business plan, 5 years of pro forma financial projections and financial and background information (including fingerprints and criminal background checks) on the principals must be submitted as part of the application. The application has a public section and a confidential section. All private, protected information is placed in the confidential section that is not open to public scrutiny.

The banking department typically likes to meet with the principals at the outset of the process for a “get to know you” session and then will interview the directors/managers as part of the review of the application. The department may ask for additional information as part of the review process. Once the review is completed, the application will be evaluated based on the soundness of its organizational structure, the adequacy of its capital plan, the reasonableness of its business plan and financial projections, the experience of board and management, whether its name is not misleading or in conflict with other bank names and consider other factors he or she deems relevant.

*b. Approval.* If the commissioner is satisfied, he or she will grant a charter by issuing a certificate

of approval, (i) specifying any conditions that have to be met before the trust company may engage in business, and (ii) endorsing the organizational instrument so that it may be filed with the Secretary of State. The filing of the organizational instrument must be completed within 90-days of the grant of the charter and the trust company’s existence begins at that time.

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*c. Commencing Business.* Once the conditions of approval are satisfied, the trust company may apply for a certificate to engage in business. The banking department will conduct an examination, and if the conditions are met, the Bank Commissioner will issue a certificate allowing the trust company to commence operations.

**2. Capital.** The minimum regulatory capital for a trust company is \$500,000. The organizer proposes the amount of capital in the capital plan that it believes will be adequate to support the trust company’s operations. The capital plan must specify (i) the amount of the trust company’s capital, (ii) the quality, liquidity, and sources of the capital, (iii) the proposed investment of the capital, and (iv) other information relevant to the capital as may be prescribed by the commissioner. The capital plan must assure the safety and soundness of the trust company. The commissioner will analyze the proposal and determine the minimum amount of capital that will be required as a condition to the approval of the application.

After the trust company is operating, its board is required to review the capital plan annually and

make adjustments as needed to make certain the capital is sufficient to protect the trust company from risk. The banking department will defer to the board's judgment so long as it has exercised due diligence in its analysis. A trust company must maintain the minimum required capital at all times. Working capital will be in addition to that amount. The board of directors is required to approve and adopt any material amendment to the capital plan and obtain the commissioner's approval.

**3. Business Plan.** The organizer proposes a business plan that must address (i) the trust business and other business in which the trust company will engage, (ii) the trust company's management and operation structures, including information technology, (iii) the trust company's disaster recovery or contingency plan, and (iv) other information relevant to the governance, operation, equity ownership, and business of the trust company, including other information as may be prescribed by the commissioner. The business plan must assure the safety and soundness of the trust company. The banking department will review the plan and evaluate its reasonableness. A trust company's board of directors is required to obtain the commissioner's approval of any material amendment.

**4. Pledge.** As a condition of approval, the commissioner will require the trust company to pledge an amount of at least \$250,000 and not more than \$1,000,000 in a bank account at a local bank to cover the commissioner's cost of supervising the liquidation if the trust company were to fail. The amount will be determined by the commissioner based on his or her assessment of the company's risk profile. Under certain circumstances, the commissioner may also use this amount to cover cost of the liquidation of another failed trust company. In such event, the trust company will be given time to replenish the account. The banking department's expenses are paid for by the institutions it regulates, and this is a mechanism to ensure that it has sufficient funds to cover the cost of a liquidation.

**5. Fidelity Bond; Errors and Omissions Insurance.** A trust company is required to have a fidelity bond in an amount sufficient to protect it from loss due to fraud or theft. The amount is determined by the board, subject to the review and approval of the commissioner. The amount should be reviewed at least annually by the board. A trust company is also required to have an errors and omissions insurance policy to protect it from claims of loss by its customers. Again, the amount is determined by the board, subject to review and approval of the commissioner.

**6. Safety and Soundness.** As noted below, a trust company is subject to periodic examinations for safety and soundness. Also, if it proposes to take any act or action that requires the approval of the commissioner, its effect on the safety and soundness of the company will be considered. Safety and soundness is evaluated on the following factors:

- a. The nature and type of fiduciary activities that the trust company conducts or proposes to conduct;
- b. The complexity of fiduciary duties that it has or proposes to have;
- c. The degree of discretion that it has or proposes to have;
- d. The amount, nature, and types of fiduciary assets that it holds or manages, or projects to hold or manage;
- e. The nature and type of non-fiduciary activities that it conducts or proposes to conduct;
- f. The character, qualifications, competence, and experience of its directors, and executive officers;
- g. The extent and adequacy of its proposed or existing internal controls and risk management procedures;
- h. The amount of its capital, fidelity bond, and errors and omissions insurance, and the adequacy of those resources for purposes of protecting its clients;
- i. The ability of a parent or affiliate to serve as a source of strength for the trust company;
- j. The quality, liquidity, amount, and source of its capital;

- k. The market or markets that the trust company serves or proposes to serve;
- l. Its financial success, the prospects for future financial success, and the reasonableness of its business plans;
- m. The existence and adequacy of insurance obtained or held by it for the purpose of protecting its clients and the settlors and beneficiaries of any trust of which it is serving or proposes to serve as a trustee;
- n. The quality and results of prior financial audits and any fiduciary compliance audits, and the results of prior examinations;
- o. The adequacy of its operating systems, its information technology systems, the trust company's cybersecurity systems, and its disaster protection and recovery systems;
- p. Its past experience complying with applicable laws and its potential for compliance with applicable laws in the future; and
- q. Any other relevant factors under rules that the commissioner may adopt.

## 7. Management.

*a. Directors and Officers.* A trust company is required to have a board of directors of at least 5 members elected or appointed in accordance with its organizational documents. A director is required to accept his or her election or appointment in writing. The directors are not required to be residents of New Hampshire. The trust company must give notice of the election or appointment of directors to the commissioner. The board is required to elect or appoint a president, a treasurer, a secretary, and the other officers as prescribed in its organizational documents. These officers must be elected or appointed no less frequently than once every 3 years and hold office subject to the pleasure of the board. If a trust company is a limited liability company, its organizational documents can identify director and officer positions by a different designation, provided their responsibilities are functionally equivalent.

*b. Authority of Board of Directors.* All of the trust company's powers are exercised by or under the authority of its board of directors, and its business and affairs are managed by or under the direction, and

subject to the oversight, of its board, subject to any limitation set forth in the organizational documents. The board is required to establish the policies and procedures for the conduct of the affairs of the trust company and to supervise its affairs to ensure that those policies and procedures are being adhered to by its officers and employees and that its operations are in compliance with federal and state laws and the organizational documents. Neither the board of directors nor individual directors may delegate their duty to supervise the affairs of the trust company.

*c. Delegation.* Subject to its oversight and any limitation set forth in the organizational documents, the board of directors of a trust company may delegate to one or more persons any powers and duties that the board of directors deems appropriate. The delegation of duties and powers to or the action by a delegatee does not alone constitute a director's compliance with the standards of conduct described in section d below. Each delegatee is also subject to the same standards of conduct to which a director is subject described in section d below.

*d. Standard of Care.* Each director of a trust company is required to discharge his or her duties under the same standards that exist for a director of a business corporation under the New Hampshire Business Corporation Act (RSA 239-A) except that a director is subject to a fiduciary duty when he or she is acting on matters related to the trust company's fiduciary activities.

*e. Officers Duties.* The president is responsible for carrying out the policies and procedures of the board and managing the day-to-day affairs of the trust company and shall be accountable to the board of directors in the performance of his or her duties. Each officer with discretionary authority shall discharge his or her duties under the same standards that exist for an officer of a business corporation under RSA 293-A, except that an officer will be subject to a fiduciary duty when he or she is acting on matters related to the trust company's fiduciary activities.

**8. Committees.** Subject to its oversight and any limitation set forth in the organizational documents, the board of directors may create one or more commit-

tees, delegate to each committee any powers and duties that the board deems appropriate, and appoint one or more directors, officers, and other natural persons to serve on each committee. Each member of a committee is subject to the same standards of conduct to which a director is subject. Each committee is required to keep minutes of its activities and report to the board as frequently as it requires. Note that the mere creation of, delegation of power or duties to, or action by a committee does not alone constitute a director's compliance with standards of conduct applicable to him or her.

**9. Meetings; Records.** The board of directors is required to meet on a regular basis as often as necessary but not less than 4 meetings a year. Minutes of each meeting must be kept, showing the names of the directors who are present and describe the activities, matters discussed, and votes taken at the meeting. The attendance of a majority of the board of directors is required for a quorum to conduct business. The board is required to adopt a policy providing standards for determining the number of absences by directors from meetings of the board or the committees which could result in the removal of a director from office. Unless the organizational documents provide otherwise, any action to be taken at a meeting of the board of directors or committee may be taken without a meeting under and consistent with any provision of the applicable law permitting the action.

**10. Annual Audits; Reports.**

*a. Auditor.* The board of directors of a trust company is required to engage a certified public accountant, at least annually, to serve as its auditor. The trust company must give notice to the commissioner of its engagement of an auditor at the time of its engagement and require its auditor to confirm the engagement to the commissioner within 30 days of the engagement. The board must also give notice to the commissioner of the termination of the engagement of an auditor at the time of the termination and require the auditor to confirm the termination to the commissioner within 30 days of the termination.

*b. Audit Report.* The auditor must examine the books, accounts, and operating systems of the trust company in such a manner as in his or her judgment will result in an audit that is in agreement with generally accepted accounting standards. The trust company must direct its auditor to provide, and the auditor is required to provide, the commissioner with a copy of its audit report, within 60 days after each is made available to the trust company. All reports, memoranda, and correspondence remain the property of the trust company.

*c. Regulatory Review.* In the course of his or her regular official examination of the trust company and at such other times that he or she considers advisable, the commissioner is required to review and analyze the work and reports of the accountants and auditors. The auditors are required to provide the commissioner with the work and reports as the commissioner may reasonably request provided the request is limited to matters that relate to the safety and soundness of the trust company. If the commissioner determines that any audit is inadequate or is otherwise deficient, then the commissioner is required to report his or her findings with instructions to the board of directors, who, within 30 days after receiving that report, must cause the trust company to comply with the report and instructions.

**11. Reports of Condition.**

*a. Annual Report.* Each trust company is required to balance its books at the close of business on the last business day in December in each year and, within 30 calendar days thereafter, make reports to the commissioner, upon forms furnished by the commissioner, showing the true conditions of the trust company at that time. The commissioner is required to prescribe what information the reports must contain and furnish the forms on which they are made.

*b. Quarterly Report.* Each trust company is required to balance its books at the close of business on the last business day in March, June, and September each year and, within 30 calendar days after the end of each of those calendar quarters, make reports to the commissioner, upon forms furnished by the commissioner, showing the true conditions of the

trust company at that time. The commissioner is required to prescribe what information the reports must contain and furnish the forms on which they are made.

**12. Examinations; Assessments.** The commissioner is required to examine the condition and management of trust companies every 18 months or more often when necessary in his or her judgment. This examination evaluates the safety and soundness of the trust company. The examination looks at the MOECA components under the Uniform Interagency Trust Rating System (management, operations (records, administrative support, audit and internal controls), earnings, and trust assets under management). It will also include a review of the capital plan, pledge and business plan.

The trust company is given a rating of 1 to 5 (1 being the highest), which rating is confidential. The commissioner may elect to skip an examination if a trust company has consistently been given high ratings in past exams and is not currently subject to an enforcement proceeding or order.

The banking department charges a per diem rate for an examination. Recently, the commissioner announced that the per diem rate will move higher over a 3-year period to bring it in line with the department's costs. The department's budget is paid by the regulated institutions and the per diem rate pays for a significant portion. Any part of the budget that it not covered by per diem fees is generally assessed across all regulated institutions. By increasing the per diem rate, the effect will be to reduce the special assessment. The general assessment is based on the asset-size of institutions. In the case of trust companies, all assets under management are included; however, the factor used by the department is scaled so that the factor declines as the asset-size grows, thereby avoiding a disproportionate assessment on larger institutions.

**13. Violations.** RSA 383-A lists fraudulent and deceptive acts and practices that can result in enforcement action against trust companies and its officers and employees by the commissioner. The commissioner also has authority to place a trust company in

a conservatorship if he or she determines that it is engage in unsafe or unsound acts or practices.

## B. BUSINESS OF TRUST COMPANIES

RSA 383-C specifically governs the activities of trust companies. It defines its powers and authorities and sets forth special requirements that relate to trust companies alone.

**1. Special Requirements.** Each trust company is required to have a business plan describing the business it intends to engage in and how it plans to so successfully prosecute its objectives and a capital plan assessing the risk attendant to that plan and the amount of capital it requires to operate in a safe and sound manner. The board of directors is required to review the plans annually or more frequently as necessary.

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**2. Trust Business.** The chapter provides an extensive description of the activities that are considered to be fiduciary in nature and permissible for a trust company to engage in. A trust company is authorized to:

- a. To execute all the powers and possess all the privileges conferred on depository banks, other than the power to accept deposits;
- b. To be appointed and to act as trustee, trust advisor, or trust protector of any trust or as executor of any estate;
- c. To be appointed and to act as receiver, assignee,

- or agent for any person or entity;
- d. To act as fiscal or transfer agent of the United States or any other person or entity and, in that capacity, to receive and disburse money;
  - e. To transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness and to act as attorney-in-fact or agent of any entity for any purpose, statutory or otherwise;
  - f. To act as trustee under any mortgage, bonds, or debentures issued by any person, and to accept and execute any municipal or corporate trust;
  - g. To receive and manage any sinking fund of any entity upon those terms as may be agreed upon between the entity and those dealing with, or having an interest in, the sinking fund;
  - h. To collect coupons on, or interest upon, all manner of securities, when authorized so to do, by the parties depositing the securities;
  - i. To accept trusts from and execute trusts for married persons in respect of the separate property of the married persons, to be their individual or joint agent in the management of the property, and to transact any business in relation to the property;
  - j. To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court; to act as assignee under any assignment for the benefit of creditors of any debtor, whether made under statute or otherwise, and to be the custodian of any moneys or assets paid into court;
  - k. To be appointed and to act under the order or appointment of any court of competent jurisdiction or otherwise (i) as guardian, receiver, trustee, committee, or conservator of the estate of any minor, any person deemed by law to be incompetent to manage his or her affairs, or any other conservatee, or in any other fiduciary capacity, or (ii) as receiver, trustee, or committee of the property or estate of any person in insolvency or bankruptcy proceedings; but this power shall not be construed to deprive any other person of any legal right to have issued to the person a letter of guardianship or of administration;
  - l. To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person;
  - m. To act in a fiduciary capacity, including (i) to take, and accept, and execute any and all trusts, duties, or powers of whatever nature or description that may be conferred upon or entrusted or committed to the trust company by any person; (ii) to exercise any other authority, trust, or power conferred upon or entrusted or committed to the trust company by grant, assignment, transfer, devise, bequest, or otherwise; (iii) to exercise any power or authority that may be granted to the trust company by order of any court of competent jurisdiction or any surrogate; and (iv) to receive, take, use, manage, hold, and dispose of, according to the terms of any trust, duty, or powers any property or estate, real or personal, that is the subject of the trust, duty, or power;
  - n. To execute trusts of every description not inconsistent with law;
  - o. To purchase, invest in, sell, and otherwise transact in securities, promissory notes, bills of exchange, bonds, debentures, or mortgages and, when moneys are borrowed or received for investment, to provide security for the borrowing or receipt of money for investment, so long as the trust company does not issue any surety or insurance for investment or engage in the business of receiving or holding deposits;
  - p. To act as trustee for a New Hampshire investment trust organized under RSA 293-B;
  - q. To act as a custodian for any person to hold the property, including the person's securities, bonds, and cash, in custody for safekeeping, so long as a trust company does not engage in the business of receiving of deposits; and
  - r. To purchase for the fiduciary estate directly from underwriters or distributors or in the secondary market:
    - i. Bonds or other securities underwritten or distributed by the trust company or an affiliate of the trust company or by a syndicate which

includes the trust company or affiliate, provided that the trust company discloses in any written communication or account statement reflecting the purchase of the bonds or securities the nature of the interest of such trust company or affiliate in the underwriting or distribution of the bonds and securities and whether the trust company or affiliate received any fee in connection with the purchase; and

*ii.* Securities of any investment company as defined under the federal Investment Company Act of 1940 for which the trust company or affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, or custodian, provided that the trust company discloses in any written communication or account statement reflecting the purchase of the securities the nature of the relationship and whether the trust company or affiliate received any fee for providing such services.

*iii.* The authority granted in paragraphs (r)(i) and (ii) of this paragraph may be exercised only if:

1. The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship;
2. The trust company discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in paragraphs (1) and (2) prior to the first exercise of that authority; and
3. The trust company procures in writing the consent of its co-fiduciaries with discretionary investment powers, if any, to the investment.

*iv.* A trust company, acting in a fiduciary capacity pursuant to paragraphs (r)(i) and (ii), may:

1. Invest in the securities of an investment company, investment trust, or other company to which the fiduciary or its affiliate provides services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodi-

an, and the investment is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor standard pursuant to article 9 of RSA 564-B.

2. Be compensated by the investment company, investment trust, or other company for

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**“A trust company is not permitted to accept deposits.”**

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providing services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, if the fiduciary at least annually notifies each person to whom it is required to send account statements under RSA 564-B:8-813 of the rate and method by which the compensation was determined.

- v.* Nothing in the preceding paragraphs (r)(1) – (4) is intended to affect the degree of prudence which is required of fiduciaries under the laws of this state. Any bonds or securities purchased under authority of this section must have sufficient liquidity and investment quality to satisfy the principles of fiduciary investment and the terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.
- vi.* No trust company which is acting in a fiduciary capacity is permitted to purchase for the fiduciary estate any fixed income or equity security issued by the trust company or an affiliate thereof, unless the trust company is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust, or the written consent of the qualified beneficiaries of the trust, as defined in RSA 564-B:1-103.

**3. No Deposits.** A trust company is not permitted to accept deposits.

**4. No Bond.** Unless required by the order of a court with proper jurisdiction, no trust company authorized to act as trustee or executor in this state is required to give bond to secure performance of the trust company's duties as trustee or executor.

**5. Nominees.** Any trust company while acting in a fiduciary or custodial capacity, either alone or jointly with a person or persons, may cause any stock or other securities to be registered and held in the name of a nominee without mention of the fiduciary or custodial relationship.

**6. Depositing Securities.** Any trust company while acting in a fiduciary capacity, or as an agent or custodian or any fiduciary acting for itself, is authorized to deposit or arrange for the deposit of securities with a bank or other regulated financial-service entity. At all time, the records of any trust company must show the name of the party for whose account the securities are so deposited.

## C. PLACE OF BUSINESS

**1. Offices.** A trust company is required to have a principal office that may be located within New Hampshire. The principal office is identified in the organizational instrument. A trust company may operate out of one or more trust offices and other offices located within the state or in any other state or jurisdiction consistent with the trust company's business plan. An office that provides only administrative services or support for its trust business is not a trust office.

**2. Opening or Relocation of Trust Office.** Before opening or relocating a trust office, other than an opening or relocation that is expressly provided in the trust company's business plan approved by the commissioner, a trust company is required to seek approval from the commissioner.

**3. Closure.** At least 10 days before closing a trust office, a trust company is required to provide notice of the closure to the commissioner and may proceed to close the trust office after filing the notice without

further action by the commissioner.

## D. CHANGES IN OWNERSHIP; COMBINATIONS

**1. Changes in Ownership or Control.** Any change in ownership (10% of equity) or control (50% of voting equity, a combination of which the trust company is a party, a sale of substantially all of its assets, or conversion into another entity form) of a trust company, whether voluntary or involuntary, requires the approval of the commissioner.

A filing must be submitted with background information regarding the proposed new owner or owners, including their identity, personal history, business background, experience, material business activities and affiliations during the past 5 years, a description of any material pending legal or administrative proceedings in which the new owner is a party, and a description of any criminal indictment or conviction of the new owner by a state or federal court.

In addition, there must be submitted a statement of the assets and liabilities of each new owner as of the end of the fiscal year for each of the 3 fiscal years immediately preceding the date of the filing, an interim statement of the assets and liabilities of the new owner as of a date not more than 90 days before the date of the notice, and a description of the material terms and conditions of the proposed change of ownership of the trust company and the manner in which the transaction is to be consummated. In the case of a change in control, additional information relating to the source of funds and future plans must also be submitted.

**2. Internal Reorganization not a Change in Ownership or Change in Control.** The acquisition or transfer of the equity or indirect ownership of a trust company between entities under common control that are affiliated with the trust company, so that, after giving effect to the acquisition or transfer, the ultimate, indirect ownership of the trust company remains the same, is not be considered a change of ownership of the trust company or a change in control of the trust company.

**3. Interim Trust Company.** If an interim entity is formed solely for the purpose of effecting a change in control of any trust company that is authorized to conduct trust business under a valid charter, the interim entity is not be obligated to obtain a charter or authority to transact business as a trust company subject to the supervision of the commissioner so long as the only business or activity in which the interim entity engages is to effect a change of control of a trust company

## E. FOREIGN TRUST COMPANIES

**1. Foreign Trust Companies.** A foreign trust company may engage in trust business in New Hampshire. A foreign trust company that engages in trust business in this state is subject to RSA 383-A and RSA 383-C and examination by the commissioner.

**2. Trust Offices.** Before opening or relocating a trust office within this state, a foreign trust company is required to make a filing with the commissioner describing the opening or relocation. A foreign trust company may only proceed with the opening or relocation of a trust office if permitted to do so by the commissioner. At least 10 days before closing a trust office within this state, a foreign trust company must provide notice of the closure to the commissioner.

**3. Domestication.** A foreign trust company may change to a New Hampshire charter by going an application process similar to the organization of a new trust company.

## F. QUALIFIED TRUST ADVISOR

A qualified trust advisor is (i) a person that serves as a trust advisor or as a trust protector and, in that capacity, exercises only limited-scope discretionary power as to a trust, and (ii) any other person designated as a qualified trust advisor pursuant to rules adopted by the commissioner. A qualified trust advisor that acts as a trust advisor or trust protector in New Hampshire, either by acting in such capacity from an office in the state or by acting in such capacity for a trust administered in the state, is not a bank

and is not be required to obtain a charter as a bank, so long as the qualified trust advisor exercises only limited-scope discretionary power as to each trust the qualified trust advisor serves as trust advisor or trust protector. A qualified trust advisor is not permitted to engage in a trust business.

## G. ADMINISTRATIVE PROCEDURES

RSA 383-A substantially revised the administrative procedures to obtain the approval of the commissioner for act or actions proposed to be taken with respect to a trust company. Some matters require a notice containing abbreviated information and others require an application with more complete information.

A 30-day time period exists for the commissioner to determine whether a notice or application is materially complete. A presumption exists that if no further information is required within the 30-day period, the notice or application is deemed to be complete. The commissioner must make a determination within 30 days from the date of material completion in the case of a notice and 60 days in the case of an application.

The commissioner may conduct investigations or request additional information at any time prior to making a determination.

## H. OBSERVATIONS

The time frame for the organization of a trust company is typically 4 to 6 months. After organization, it is examined within the first 12 months of operation to determine whether it is properly attending to the regulatory requirements. The department will be helpful in directing management's attention to items that need to be addressed. Assuming a favorable examination, then it will be examined every 18 months thereafter.

It is important to strive for a "1" or "2" rating because that status has benefits for the trust company – it simplifies some regulatory reviews and may result in a skipped examination from time to time. Typically, examination expenses run between \$25,000 and \$40,000 – but that will vary with the

size and complexity of a trust company and how well it manages its business.

The general assessment is in a state of flux at this point as new per diem rates and fees go into effect – but it should be relative small as time goes on. The general principle in place is that each trust company

is expected to cover all banking department costs associated with its examination and regulation by the department.

The banking department expects to issue new rules and forms specific to trust companies as the new laws go into effect.



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