

<b>Trust Company</b>		<b>Date of Exam</b>	
<b>Charter #</b>		<b>Prepared By</b>	

## # 9 - TRUST COMPANY MANAGEMENT (Risk Focused)

### ASSIGNMENT OVERVIEW

Quality management is perhaps the single most important element in any company. Its importance grows as institutions face the stress of an increasingly competitive marketplace. An evaluation of management, therefore, focuses on the experience, capability, judgment, and integrity of the directors and senior officers of a company. The health and viability of a company are dependent upon an interested, informed, and vigilant Board. The Board is ultimately responsible for the conduct of the company's affairs. The Board hires senior management and establishes policies under which they will operate. Although the performance of day-to-day operations may be delegated, directors remain accountable for ensuring that all practices are prudent and in compliance with applicable laws and regulations.

### INSTRUCTIONS

Examiners must follow the requirements in the Examiner Bulletin addressing Guidelines for Procedures and Work Paper Documentation for Commercial Examinations.

All examiners performing these procedures must be listed above in the "Prepared By" section. All of the CORE ANALYSIS PHASE should be completed. Comments and findings for each step should be made in the comment box below each question. Reference to work paper documentation should also be included here. Documentation is to be sufficient to allow an audit trail of the examiner's thought process and all significant findings.

The Summary of Findings page contains strengths, weaknesses, and management's response to the weaknesses. The SEIC/EIC should determine which comments on the Summary of Findings will be included in the Report of Examination.

The EIC/AEIC should review this procedure when complete. Acknowledgement that this procedure has been reviewed by the EIC/AEIC will be indicated on the SCOPE FORM.

**EXAMINERS ARE RESPONSIBLE FOR EXERCISING SOUND JUDGMENT AND UTILIZING REASONABLE INVESTIGATIVE AND ANALYTICAL SKILLS TO ARRIVE AT AN ACCURATE ASSESSMENT OF THE RISK PROFILE OF THIS SEGMENT OF THE INSTITUTION'S OPERATIONS. PERFORMING ALTERNATE PROCEDURES NOT LISTED WITH THESE GUIDELINES MAY BE NECESSARY TO COMPLETE THIS RISK ANALYSIS.**

## CORE ANALYSIS PHASE

### #9 TRUST COMPANY MANAGEMENT

#### 1. Prior Criticism

**1.** Determine whether deficiencies noted in the last examination and most recent internal/external audit have been addressed and/or corrected by management. Detail how deficiencies were corrected. *Include a copy of audit exceptions and/or prior examination criticisms and management response in work papers or indicate the page number in the prior report of examination where the deficiencies are noted, or summarize exceptions/criticisms below, if applicable.*

**Comment:**

#### 2. Corporate Records and Applications

**2a.** Determine whether any changes have been made to the corporate records since the last examination. If so, refer to the **APPENDIX** for additional guidance.

**Comment:**

**2b.** Determine if the Department approved any corporate applications (i.e. merger, branch, etc.) since the previous examination. If yes, investigate if the approval was contingent upon any subsequent action(s) and if the contingency has been met. Comment on any noncompliance.

**Comment:**

**2c.** Review the organizational chart to determine if it accurately portrays the structure of the trust company and if it provides a well-organized division of duties. Comment on any deficiencies considering the size and complexity of the trust company.

**Comment:**

#### 3. Stockholders and Board of Directors

**The following worksheets may be utilized in completing this section.**

**Worksheet I:** [ANNUAL SHAREHOLDER COMPOSITION AND MEETING INFORMATION](#)

**Worksheet II:** [BOARD OF DIRECTORS COMPOSITION AND MEETING INFORMATION](#)

**3a.** Read and brief the minutes of all stockholders' and Board of Directors' meetings since the previous examination. Record major actions taken in board meetings held since the previous examination which is not part of a normal monthly meeting. *Include in work papers.* Determine if the board elected a principal executive officer and an officer responsible for corporate books and records as required by TFC §183.106. *Indicate who performs this duty in the comment section.*

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Determine compliance with the applicable Business Organizations Code and Texas Finance Code statutes related to ownership and management of a state trust company. *Comment on compliance and any weaknesses.*

Consider the following:

- a) Determine if there has been at least one regular stockholder meeting within the last twelve months at which the owners of a majority of the capital stock were present, either in person or by proxy, as required by Section 21.351 of the Business Organizations Code (BOC).
- b) Determine if the trust company has had meetings on at least a quarterly basis, as required by Section 183.105 of the Texas Finance Code (TFC).
- c) Determine if the board approves the minutes and sufficiently reviews the operations, activities, and financial condition of the trust company, as required by TFC §183.105.
- d) Determine if any meetings lacked a majority of board members, in which case there was no quorum as per Section 21.358 of the BOC.
- e) Record the creation of any special committees, and the compensation that is received from being a committee member. Determine if payment is automatic, or contingent upon attendance.
- f) Determine if the board approved any and all transactions between the trust company and directors or their interests. Did the interested director(s) abstain from voting on the matter?
- g) As per TFC §183.109(a), did the trust company obtain prior approval of a disinterested majority of the board before selling, leasing, or purchasing any assets to (or from) any of its officers or directors? If not, did the trust company obtain prior written approval of the Banking Commissioner? Refer to 7 TAC §17.3 relating to the sale or lease agreements with an officer, director, principal shareholder, or affiliate.
- h) As per TFC §183.109(b), did the trust company obtain the prior written approval of the Banking Commissioner before consummating, renewing, or extending a real property lease in which an officer, director, manager, managing participant, or principal shareholder of the trust company, or an affiliate of the trust company, has an interest?
- i) Determine if there are advisory directors attending the board meetings that need to sign a confidentiality agreement. Is confidential information related to the bank or bank's customers disclosed? Per TFC §183.104, did the board adopt a resolution that identifies the advisory director and describes the purpose for disclosure of the information? Has the advisory director signed a confidentiality agreement?

### Comment:

**3b.** Verify compliance with Texas Finance Code §183.103 relating to the Board of Directors. Comment on compliance and any weaknesses.

Consider the following:

- a) Does the trust company have between five and twenty-five directors, the majority of whom

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are Texas residents, as required by TFC §183.103(a)?

- b) Is the principal executive officer a qualified member of the board as required by TFC §183.103(a)?
- c) Is there is evidence that any director may be prohibited from serving due to exclusionary factors listed in TFC §183.103(b):
  - A judgment against him/her in favor of the trust company?
  - A charged off obligation at this trust company?
  - A felony conviction?
  - Person has violated general duties with respect to a trust which the trust company has fiduciary responsibility and has not been corrected.
- d) Have all directors been elected within the last twelve months, and any interim vacancies been properly filled, as required by TFC §183.103(c)&(d)?
- e) Has each director taken an oath of acceptance as required by TFC §183.103(e) prior to taking office?

### Comment:

**3c.** Review the information on the directors to determine the quality of board composition and interaction. Provide an assessment in the comment section.

Consider the following:

- a) Does there appear to be a reasonable range of knowledge/expertise among board members to meet the needs of the bank as well as those of the local economy?
- b) Are there sufficient outside directors to provide alternative perspectives and objectivity?
- c) Have all directors demonstrated active participation in the board through attendance of regularly scheduled meetings?
  - Is there any member who has attended less the 50% of the meetings?
- d) Is there any evidence of domination by a particular member or group?
- e) Do directors' fees appear reasonable for the size and condition of the institution, and for the contribution of individual directors?

### Comment:

**3d.** Review a board packet from either the most recent board meeting or a sample of meetings between examinations. Determine if the board receives sufficient information on a regular basis to supervise the activities of the trust company. *Indicate what was reviewed in the comment section. Refer to [Appendix](#) for additional guidance.*

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**Comment:**

### 4. Management Actions

**4a.** If the trust company is under any form of administrative action, evaluate the steps taken by the Board since the previous examination to reach compliance with the administrative action.

**Comment:**

**4b.** Comment on the nature and level of current/previous violations of law and management's ability/actions to make corrections.

**Comment:**

### 5. Management's Ability

**5a.** If any specialty examinations (fiduciary or information technology) received a composite rating of less than satisfactory, consider the impact to the overall management rating at this examination.

**Comment:**

**5b.** Determine if management and the Board have developed and adopted a strategic plan. Note any deficiencies with management's ability to plan or with the trust company's Strategic Plan. Review for compliance with Supervisory Memorandum 1009 - Business Plans and Strategic Planning. Refer to [Appendix](#) for additional guidance.

**Comment:**

**5c.** Evaluate management's ability to recruit and maintain adequate and capable personnel. Comment on weaknesses regarding the bank's hiring program, training, excessive turnover, and management succession. Refer to [Appendix](#) for additional guidance.

**Comment:**

### 6. Personnel Issues

**6.** Determine if the staffing levels are sufficient and employees are well qualified and reasonably compensated. Refer to [Appendix](#) for additional guidance.

**Comment:**

### 7. Audits

**7.** Evaluate audit policies and the auditing program. Refer to [Appendix](#) for additional guidance.

**Comment:**

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**8. Final Analysis**

8. Complete the Summary of Findings.

## SUMMARY OF FINDINGS

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**Describe all strengths evident from the evaluation.**

**Describe all weaknesses evident from evaluation, including violations of law/regulation/rules; noncompliance with Departmental policies/guidelines; internal policy deficiencies/noncompliance; internal control weaknesses; MIS problems; and deficiencies in management supervision.**

**Determine why weaknesses exist and comment on management's response and plan of action. Identify bank personnel making the response.**

**SUMMARY RISK RATING ASSIGNED:** Choose an item.

**Ratings: 1-Strong; 2-Satisfactory; 3-Less than satisfactory; 4-Deficient; 5-Critically deficient; NR-Not Rated**



Ratings  
Definitions.xlsm

*Provide copy of this page to EIC/AEIC. Receipt and review of this form by the EIC/AEIC will be evidenced by his/her initials in the appropriate column for this procedure on the SCOPE FORM.*

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## APPENDIX

### Corporate Records and Applications

**Consider the following if there have been changes to the corporate records:**

1. Determine if any amendments have been made in the Certificate of Formation. If yes, determine compliance with the following:
  - Is there evidence that prior approval was acquired from the owners of two-thirds of the capital stock as required by Section 3.052 of the Business Organization Code; and
  - Is there evidence that the original and one copy of the Certificate of Amendment or re-created Certificate of Formation were filed with the Banking Commissioner for approval?
2. Review the bank's by-laws and determine:
  - Do the by-laws appear appropriate for the needs of the bank?
  - Are the by-laws being adhered to the Board?
  - Have there been any changed to the by-laws since the last examination? If yes, explain the changes.

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### Board Meeting Materials

**Consider the following regarding Board meeting materials. Determine if the board receives sufficient information on a regular basis to supervise the activities of the trust company.**

1. Does the board package contain at a minimum, the following information?

**Corporate Activities:**

- A monthly statement of condition and income used for comparative analysis between projections and performance, with notes explaining any significant deviations.
- Review of corporate investments.
- An analysis of the trust company's capital position.
- An analysis of the trust company's liquidity position.
- A list of any new litigation, a status report on existing litigation, and review of compliant letters.



- A report on any major endeavors, such as mergers, acquisitions, branch applications, and/or material building plans.

**Fiduciaries Activities:**

- Ratification of trust committee minutes? (if the Board has delegated its responsibility).
  - Approval of all accounts opening and closing.
  - Overdrafts.
  - Review of fiduciary investments.
  - Annual account reviews.
  - Discretionary distributions or extraordinary expenditures.
  - Litigation or complaint letters.
2. Do the committees report regularly and in sufficient detail to the full Board as to keep it fully informed?
  3. Are committee records sufficient to determine which accounts were reviewed and actions approved?

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## **Management’s Ability**

**Consider the following to determine how major decisions are made:**

1. Is the trust company independent or part of a holding company?
2. Who makes decisions related to acquisitions, divestitures, and branching?
3. How involved are the directors?
4. For holding company institutions, is there a degree of autonomy in product development, advertising, market research, etc.?

**Consider the following to determine techniques management uses in planning:**

1. The role of the CEO
2. Directors, senior managers, and middle managers involvement in the planning process
3. How goals and objectives are communicated to all employees

**Evaluate strategic and capital planning, referring to Supervisory Memorandum 1009 “Business Plans and Strategic Planning” for guidance.**

**Consider the following:**

1. Does the trust company have any formal plans outlining short- and long-term goals, and strategies for meeting such?

2. Are plans based upon reasonable assumptions?
3. If expansion/growth is envisioned, do plans indicate a realistic means of maintaining capital adequacy?
4. Do the plans address:
  - a. Competition?
  - b. Technology?
  - c. Customer wants and needs?
  - d. New products?
5. Are the fiduciary plans consistent with the trust company's:
  - a. Financial condition?
  - b. Facility?
  - c. Location?
  - d. Customer base?
  - e. Management ability?
6. Is the trust company operating within the framework of the plan, or has significant deviation occurred?

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## **Recruiting and Maintaining Adequate and Capable Personnel**

**Consider the following:**

1. Does the trust company have an ongoing hiring program to ensure consistency in qualified hires?
2. Do performance standards exist to assist in fair and consistent evaluations?
3. Are training programs employed?
4. Is there sufficient staffing to provide for management succession in all important functions?
5. Does there appear to be excessive turnover, which may indicate other management problems?
6. Are salaries consistent with the local economy and competition?
7. Does the trust company have a vacation policy?

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## Personnel Issues

### Consider the following:

1. Do directors' fees appear reasonable for the size and condition of the institution and the attendance of individual directors?
2. Review biographical information on key management personnel. Do managers appear well qualified given the nature and volume of assets under administration?
3. Do overall staffing levels appear sufficient to administer corporate and trust functions?
4. Are salaries and other forms of compensation reviewed by the Board for appropriateness in relation to duties, performance, etc.?
5. Does the Board or a committee thereof, at least annually review the CEO's performance and progress toward attaining objectives set by the Board?
6. Is the compensation amount unreasonable or disproportionate to the services provided?
7. Review fringe benefits (country club memberships, automobile, etc.) paid on behalf of executive officers.
8. Do the type and amount of expenses appear reasonable for benefits derived?
9. In select circumstances, examiners may want to review a sample of credit card or other personal-type expenses paid by the trust company to ensure that expenses appear appropriate.

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## Audits

### Consider the following:

1. Has the Board appointed an independent Audit Committee?
2. Does the Audit Committee meet on a scheduled basis?
3. Do minutes and other reports reflect the proper discharge of duty?
4. Has the Board adopted an audit policy?
5. Does the policy provide adequate guidance?
6. Review the most recent audit, engagement letter, and response by management.
7. Does the engagement letter cover all corporate activities?
8. Does the audit identify any major deficiencies?
9. If so, have all major deficiencies been corrected?
10. Will the same firm be employed to conduct the next audit?
11. If not, describe reasons for change.

- 12.** Has an engagement letter been executed?
- 13.** Will the scope of the next audit be satisfactory?
- 14.** Does the company have a formal internal audit program?
- 15.** Does it function independently?
- 16.** Is the internal audit program heavily weighted toward fiduciary activity?
- 17.** Does the Internal Auditor report directly to the Audit Committee?
- 18.** What is the scope and frequency of internal audits?
- 19.** Is the internal audit program satisfactory?
- 20.** Has management addressed and corrected all criticisms in the latest audit?
- 21.** Are any uncorrected matters repeat criticisms?
- 22.** Has management addressed and corrected all criticisms in the previous report of examination?
- 23.** Is there a recurring pattern of criticism that could be attributable to carelessness, ignorance, or a disregard for regulatory and industry standards?
- 24.** Does management offer a positive response to reasonable recommendations from auditors and regulatory agencies?

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**New Capital Issued**

Date	Par Value	Selling Price

**Surplus Adjustments**

Date	Amount	Date Certified	Reason

**Amendments to By-Laws**

Date	Amendment

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