



TEXAS DEPARTMENT OF BANKING

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SUPERVISORY MEMORANDUM – 1030

October 25, 2023

TO: All State-Chartered Trust Companies
All Bank and Trust Examining Personnel

FROM: Charles G. Cooper, Banking Commissioner

SUBJECT: Policy on Enforcement Actions for Trust Companies¹

OVERVIEW

The purpose of this Memorandum is to set forth the circumstances under which enforcement actions are used by the Department of Banking (Department) with regard to the trust companies under its regulation, and to specify the general methodology which is followed. An enforcement action is designed to address and correct specific problems identified within the financial and operational affairs of a trust institution and is an essential element of effective regulation.

PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Other than final Prohibition or Removal Orders, Department enforcement actions, whether informal or formal, are confidential. The Banking Commissioner (Commissioner) has discretion to publicize final Cease and Desist Orders, final Administrative Penalty Orders, Orders of Supervision, and Orders of Conservatorship if the Commissioner concludes that the release would enhance effective enforcement of the order.

DEFINITIONS

“Management” includes trust company officers as well as trust company directors.

“Regulatory responses” are actions taken by the Department in response to particular conditions at a trust company. They include informal communications as well as enforcement actions.

POLICY FOR IMPLEMENTING ENFORCEMENT ACTIONS

Regulatory responses are initiated whenever the Department becomes aware of situations or issues that weaken the safety and soundness of an institution, or that arise from noncompliance with policies, procedures, regulations, or laws. To assure uniformity of action and to ensure that

¹ This Supervisory Memorandum revises and supersedes the Memorandum issued on February 19, 2013. The current revisions to this Memorandum are non-substantive.

supervisory efforts are directed to trust companies exhibiting elevated risk profiles or other major deficiencies, the general policy of the Department is to initiate enforcement actions on trust companies with composite CAMEL ratings of “3,” “4,” or “5,” and on trust companies with composite modified Uniform Interagency Trust Rating System (UITRS) ratings of “3,” “4,” or “5.” (See the definition of trust company CAMEL ratings and UTRIS ratings in Supervisory Memorandum – 1002.) Trust companies rated “1” or “2” generally do not warrant an enforcement action, although the Department may initiate an action depending on the specific circumstances of the institution. In particular, trust companies have Information Technology examinations and Bank Secrecy Act examinations that may reveal the need for an enforcement action even though the trust company has a composite rating of “1” or “2.”

Enforcement actions often set forth the practices, conditions, and violations giving rise to the particular problems or weaknesses identified. The actions also outline specific corrective measures, often including appropriate time frames and goals for achievement. Specific types of enforcement actions available to the Department are outlined below in the section “Types of Enforcement Actions.”

The Department’s enforcement actions are not part of a hierarchy; they are not designed to build on one another. On a case-by-case basis, the Department thoroughly analyzes the situation at the trust company and designs the action it believes to be the most effective in curing the trust company’s adverse conditions.

TRUST COMPANY RATINGS

1-Rated Trust Companies

A composite “1” rating implies that a trust company is sound in all respects and that any weaknesses or deficiencies are so insignificant or immaterial that they pose no supervisory concern. Regulatory responses are generally limited to informal requests for future plans and/or a written response from the trust company regarding the examiner's findings as indicated in the report of examination.

2-Rated Trust Companies

Trust companies having a composite rating of “2” are fundamentally sound. Identified weaknesses or deficiencies are generally of a moderate nature and correction is attainable in the normal course of business. Regulatory responses are the same as for 1-rated trust companies; however, a Board Resolution may be initiated depending on specific circumstances encountered. In instances of repeated or willful law violations and/or continuing unsound trust company practices, the issuance of a stronger enforcement action may be warranted.

3-Rated Trust Companies

A composite “3” rating implies that a trust company has weaknesses which, if not corrected, could worsen into a more severe situation. Regulatory responses will most likely be enforcement actions which require remedial action.

4 and 5-Rated Trust Companies

Trust companies with composite ratings of “4” or “5,” by definition, have problems of sufficient severity to warrant a strong regulatory response. An enforcement action such as a Cease and Desist Order is issued when there is evidence of unsafe and unsound practices or conditions. Exceptions to this policy are considered only when the condition of the trust company clearly reflects significant improvement resulting from an effective correction program or where individual circumstances militate against the appropriateness or feasibility of strong enforcement actions.

TYPES OF ENFORCEMENT ACTIONS

Enforcement actions are either formal or informal. With the exception of Determination Letters, informal enforcement actions are voluntary commitments made by trust company management designed to correct identified deficiencies and ensure compliance. Formal enforcement actions are generally more severe and result in an order issued by the Commissioner. Trust companies have a statutory right of appeal from formal enforcement actions to which they have not agreed.

A. Informal Enforcement Actions

Board Resolutions:

A Board Resolution is a statement adopted by the board of directors of a trust company that specifies corrective actions the board of directors will take. It is issued either on management's own volition or at the request of the Department. Board Resolutions are accepted from trust companies that exhibit only modest regulatory concerns.

Memorandum of Understanding:

A Memorandum of Understanding is an agreement between a trust company and the Commissioner that sets forth specific corrective actions to be undertaken by the board of directors of a trust company. This action is normally pursued with trust companies where management does not pose a significant regulatory concern, and where the Department believes management has the ability and the willingness to correct noted deficiencies. A Memorandum of Understanding is an agreement within the meaning of Texas Finance Code (TFC) Sections 181.002(a)(22)(B) and 185.002. Therefore, violation of a Memorandum of Understanding is grounds for issuance of a Cease and Desist Order, and, if other conditions are met, an Order of Supervision or Conservatorship. A Memorandum of Understanding may occasionally have a different title.

Determination Letter:

A Determination Letter is a warning issued pursuant to Section 185.001 of the TFC that the practices or condition of a trust company need immediate attention to avoid the issuance of an enforcement order under the TFC. A Determination Letter includes a listing of the requirements to abate the Commissioner's determination. A Determination Letter is normally used in a trust company where problems are of a serious nature, but the Commissioner believes that a more formal enforcement action may not be necessary to achieve correction.

B. Formal Enforcement Actions

Cease and Desist Order:

A Cease and Desist Order is issued pursuant to Section 185.002 of the TFC, demanding that an officer, employee, director, or manager of a trust company, or the trust company itself discontinue violations and/or unsafe and unsound practices, and take certain affirmative action as may be necessary to correct the conditions resulting from such violations or practices. A Cease and Desist Order is deemed necessary and appropriate for serious violations and unsafe practices. Management of a trust company subject to such an order would normally have demonstrated a disregard for safe and sound trust company practices and/or the lack of willingness or ability to correct deficiencies on their own. If a trust company agrees to enter into such an order, the order is called a Consent Order. The Commissioner may publish a final Cease and Desist Order or Consent Order pursuant to TFC Section 185.012.

Order of Removal or Prohibition:

A Removal or Prohibition Order is issued pursuant to Section 185.003 of the TFC if the Commissioner finds that a present or former officer, director, manager, managing participant, or employee, controlling shareholder or participant, or other person participating in the affairs of a state trust company has committed or participated in violations of law or agreements, and/or unsafe and unsound trust company practices, or made false entries, which caused certain effects, and which were done in other than an inadvertent or unintentional manner. Such orders have the effect of removing a person from office or employment or prohibiting a person from office, employment, or any further participation in the affairs of a state trust company or any other entity chartered, registered, permitted, or licensed by the Commissioner. The Commissioner must publish all final Removal and Prohibition Orders.

Order of Supervision:

Pursuant to Section 185.101 of the TFC, upon determining that a trust company is in hazardous condition as defined by TFC Section 181.002(a)(22), the Commissioner may issue an Order of Supervision without prior notice to appoint an individual as a supervisor of the trust company. Supervision is generally used in situations where the Commissioner has little confidence in the ability or willingness of the management of the trust company to follow safe and sound trust company practices. The authority of a supervisor, (enumerated under TFC Section 185.106), includes acting as the Commissioner's on-site observer and agent to assure, through veto authority and/or moral suasion, that the trust company is operated properly and in accordance with law and the enforcement action.

Order of Conservatorship:

An Order of Conservatorship may be issued by the Commissioner pursuant to Section 185.102 of the TFC when it is determined that a trust company is in hazardous condition and immediate and irreparable harm is threatened to the trust company, its depositors, creditors, clients, shareholders or participants, or the public. Under TFC Section 185.107, the board of directors may not direct or participate in the affairs of the trust company during

conservatorship. An appointed conservator immediately takes charge of the trust company, its property, books and records, and affairs on behalf of and at the direction and control of the Commissioner.

Administrative Penalties:

If a trust company or person commits applicable violations of law or a Commissioner's order (see TFC Section 185.009), the Commissioner may seek to assess monetary fines or penalties. The trust company or person is notified that a hearing will be held to determine whether administrative penalties will be assessed. Unless the violation is of a Commissioner's order, the trust company or person will be given an opportunity to correct the action and reduce or avoid the penalty. TFC Section 185.010(b) sets out factors the Commissioner must consider when setting the penalty and Section 185.010(c) sets out minimum and maximum penalty amounts.

PROCEDURE FOR IMPLEMENTING ENFORCEMENT ACTIONS

Board Resolutions, Memorandums of Understanding, and Determination Letters are normally handled through written correspondence with the board of directors of a trust company. Nevertheless, they may require a special meeting of the board of directors. Other enforcement actions usually require a special meeting of the directorate of the trust company and generally such meetings are conducted by senior Department officials, including a member of the legal staff, at the Austin headquarters office.

Follow-up by examining personnel on enforcement actions is conducted in accordance with the Department's examination priorities unless variance from policy is deemed necessary. A trust company that is placed under Supervision or Conservatorship will have the appointed supervisor or conservator assist in monitoring compliance with enforcement orders.