

September 30, 2004

TO ALL TRUST COMPANIES, BANK AND TRUST COMPANIES, AND SAVINGS BANKS AND SAVINGS ASSOCIATIONS WITH TRUST POWERS:

This letter is to advise you of a provision of the Banking Code of 1965 (the “Banking Code”) that could potentially expand the permissible fiduciary activities available to you beyond the parameters of Chapter 4 of the Banking Code.¹ Additionally, based upon this provision, this letter is to alert you of the elimination of an approval requirement under Chapter 4 of the Banking Code that may result in a significant reduction in the paperwork that Pennsylvania state-chartered trust companies, bank and trust companies, and savings banks and savings associations with trust powers (“Pennsylvania institutions”) are required to file with the Pennsylvania Department of Banking (the “Department”) regarding the pledging of obligations as collateral to secure trust funds awaiting investment.

Section 201(f) of the Banking Code, added to the Banking Code as part of the amendments to the Banking Code contained in Act 89 of 2000, permits Pennsylvania institutions to engage in fiduciary activities to the same extent as national banks without notice to the Department.² Thus, to the extent that Chapter 4 of the Banking Code contains requirements or restrictions related to fiduciary activities that are not contemplated by the rules governing national bank fiduciary activities, Pennsylvania institutions may follow the rules applicable to national banks. Furthermore, by application of Section 201(f) of the Banking Code, Pennsylvania institutions may engage

¹ The fiduciary activities of savings associations are governed by 10 Pa. Code § 31a *et seq.*; however, by application of Section 701(a)(24) of the Savings Association Code of 1967, 7 P.S. § 6020-101(a)(24), a savings association may act in any fiduciary capacity to the same extent as banks and trust companies.

² Section 201(f) of the Banking Code states that:

[n]otwithstanding any other provisions of this act or any other law, an incorporated institution shall have the same power to engage in fiduciary activities, both within and outside of this Commonwealth, as a national banking association pursuant to 12 U.S.C. § 92a. The department shall interpret the provisions of 12 U.S.C. § 92a in a manner consistent with regulations and interpretations as provided by the Comptroller of the Currency.

7 P.S. § 201(f). An “incorporated institution is defined as “a bank, a bank and trust company, a trust company or a savings bank.” 7 P.S. § 102(q).

in any expanded fiduciary activities that are available to national banks by statute, regulation or interpretation.

Based upon the mandate of Section 201(f) of the Banking Code, the Department has determined that the requirement that Pennsylvania institutions obtain the approval of the Department to pledge obligations and securities beyond those obligations listed in Section 403(c)(ii) of the Banking Code³ as collateral in order to secure trust funds awaiting investment in the depository division of a Pennsylvania institution with trust powers is a restriction that is not consistent with the rules applicable to national bank fiduciary activities. Therefore, effective as of the date of this letter, Pennsylvania institutions are no longer required to obtain the Department's approval under Section 403(c)(ii) of the Banking Code in order to pledge obligations or securities other than those listed in Section 403(c)(ii) of the Banking Code as collateral to secure deposits of fiduciary funds awaiting investment, provided that such pledged collateral is acceptable under the rules applicable to national banks at 12 C.F.R. § 9.10.

Please contact James A. Acri, Administrator, at (717) 787-7333 with any questions you may have regarding this letter. In our supervisory and regulatory role, we at the Pennsylvania Department of Banking continue to look forward to working with you to make the Pennsylvania state charter the charter of choice for financial institutions in Pennsylvania.

Sincerely,

Ronald P. Wysochansky
Deputy Secretary of Banking

³ 7 P.S. § 403(c)(ii). 10 Pa. Code § 31a.6(b)(1)(ii), applicable to savings associations, contains a similar requirement.