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Superintendent Guidance
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Transfer of Fiduciary Assets to Successor Trust Company

TO: STATE-CHARTERED BANKS

The banking industry in Iowa continues to grow and evolve, particularly with respect to providing fiduciary services. The Iowa legislature recognized these changes, and the need for Iowa to continue to adapt, by adopting a variety of changes to the provisions of the Iowa Banking Act (“Act”), in particular those relating to authorization to act in a fiduciary capacity in Iowa and the succession of fiduciary accounts from one authorized fiduciary to another. This Superintendent Guidance addresses the impact of these provisions of the Act with respect to the ability of state-chartered banks planning to sell themselves and exit the business of providing fiduciary services while ensuring a degree of continuity for the Iowa customers who have long-relied on the bank to serve in a fiduciary capacity.

The Act was amended in 2022 to explicitly address the ability of out-of-state trust companies to act in a fiduciary capacity in Iowa. A new provision of the Act, Iowa Code section 524.1005A, specifically provides that a “trust company chartered or organized under the laws of another state may only act in a fiduciary capacity in [Iowa] if it satisfies the requirements for nonresident corporate fiduciaries” codified in Iowa Code section 633.64. The eligibility requirement in Iowa Code section 633.64(2) authorizes a trust company organized under the laws of another state to act in a fiduciary capacity in Iowa if trust companies organized under Iowa law “are permitted to act as a fiduciary under similar conditions in the state where such . . . trust company is located.” If the laws of the home state of an out-of-state trust company do not satisfy this reciprocity requirement with respect to Iowa trust companies seeking to act in a fiduciary capacity in such other state, then a trust company organized under the laws of that state is not eligible to act in a fiduciary capacity in Iowa.

Prior to the passage of this new language, the Act did not give express authority for trust companies organized under the laws of other states to succeed to fiduciary accounts in Iowa. The amended language of Iowa Code section 524.1007(1) now provides that an out-of-state trust company “may enter into an agreement for the succession of any fiduciary accounts with one or more other banks or trust companies,” provided the laws of the trust company’s home state satisfy the reciprocity requirements of Iowa Code sections 524.1005A and 633.64(2). But neither the old nor the current language of the Act addresses the authority of trust companies organized under the laws of other states to establish or maintain physical offices in Iowa. The Division of Banking has long held that the Act’s prohibition on organizing new

non-depository trust companies under Iowa law, combined with the Act's silence with respect to the physical presence of out-of-state trust companies in Iowa as contrasted with the extensive provisions relating to the physical presence of Iowa and out-of-state banks in this state, prohibit out-of-state trust companies from establishing or maintaining physical offices in Iowa.

The addition of these new provisions specifically addressing the authority of out-of-state trust companies to act in a fiduciary capacity in Iowa and to succeed to fiduciary accounts in Iowa law under Iowa Code section 524.1007 has raised new questions about the authority for an out-of-state trust company to establish a physical presence in Iowa when it succeeds to fiduciary accounts previously held by an Iowa bank. The amendments to the Act did not add any language specifically addressing the authority for trust companies organized under the laws of other states and authorized under Iowa Code sections 524.1005A and 633.64(2) to act in a fiduciary capacity in Iowa to establish physical offices in this state.¹

While the amendments to the Act did not directly address the authority of out-of-state trust companies to establish physical offices in Iowa, these changes are meaningful. And the Act continues to provide that its purposes include protecting “the interests of depositors, creditors, shareholders, and of the interest of the public in a sound and strong banking system” and the “opportunity for state banks to effectively serve the convenience and banking needs of their depositors, borrowers, and other customers and to participate in and promote the economic progress of Iowa.” Iowa Code section 524.102(4), (6).

In light of the recent amendments to the Act and these overarching purposes of the Act, an out-of-state trust company authorized to act as a fiduciary in Iowa pursuant to Iowa Code section 524.1005A may establish and maintain a physical office in Iowa when all of the following conditions are met:

- 1) It acquires some or all of the fiduciary assets of a state bank that is being sold and the acquirer is not purchasing or acquiring the affected fiduciary assets as part of the transaction (the sale must require the filing of an application for a change of control, merger, or purchase and assumption transaction subject to the approval of the Iowa Division of Banking, the bank regulatory authority of another state for out-of-state banks, or the Office of the Comptroller of the Currency for national banks);
- 2) The sale of the state bank is consummated no later than 60 days after the out-of-state trust company receives the fiduciary assets from the state bank;
- 3) The physical office of the out-of-state trust company is located in the same municipality where the trust department of the relinquishing state bank was located; and
- 4) The out-of-state trust company does not offer fiduciary products or accounts to residents of Iowa other than the types of products and accounts it acquires from the relinquishing state bank.

¹ Many states bifurcate the questions of (1) whether a non-depository trust company organized under the laws of another state is authorized to act in a fiduciary capacity in the host state, and (2) whether out-of-state trust companies authorized to act in a fiduciary capacity in a host state are authorized to establish physical offices in the host state. *See, e.g.*, N.H. Rev. Stat. 383-C:11-1101(a) (authorizing out-of-state trust company to “engage in trust business” in the state), N.H. Rev. State 383-C:11-1102(a) (requiring permission from state commissioner of banks before out-of-state trust company may open a trust office in the state).

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Permitting trust companies organized under the laws of other states to maintain physical offices in Iowa under these narrow circumstances will protect the interests of Iowa customers, who have no voice in an Iowa bank's decisions to sell to another bank or in the decision of acquiring banks to accept new fiduciary accounts, and will ensure that the convenience and needs of those Iowa customers for fiduciary services continue to be met.

Sincerely,

A handwritten signature in black ink that reads "Jeff Plagge". The signature is written in a cursive style with a large initial "J".

Jeff Plagge
Superintendent of Banking