



Comptroller of the Currency
Administrator of National Banks

Northeastern District
1114 Avenue of the Americas, Suite 3900
New York, New York 10036

May 3, 2005

Conditional Approval #694
June 2005

Mr. John G. Holinka
Associate General Counsel
HSBC Bank USA, National Association
One HSBC Center, 27th Floor
Buffalo, NY 14203

Re: HSBC Trust Company (Delaware), National Association, Wilmington, DE
Application Control Numbers: 2005-NE-01-0003
Charter # 24601

Dear Mr. Holinka:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national trust bank, which will engage solely in fiduciary activities, with the title of HSBC Trust Company (Delaware), National Association ("Trust Company"). On May 3, 2005, the OCC granted preliminary conditional approval of your charter application after a determination that your proposal met certain regulatory and policy requirements.

This preliminary conditional approval is granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Trust Company's representatives. We also made our decision to grant preliminary conditional approval with the understanding that the proposed Trust Company will apply for Federal Reserve membership.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Trust Company to open will not be granted until all preopening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary conditional approval should the OCC deem any interim development to warrant such action.

Mr. John G. Holinka
Associate General Counsel
HSBC Bank USA, National Association

This preliminary conditional approval is subject to the following standard conditions:

- 1) The Trust Company: (i) shall give the Deputy Comptroller, Large Bank Supervision at least sixty (60) days prior written notice of the Trust Company's intent to significantly deviate or change from its business plan or operations and (ii) shall obtain the OCC's written determination of no objection before the Trust Company engages in any significant deviation or change from its business plan or operations.¹
- 2) Trust Company shall maintain a minimum of \$10 million in Tier 1 capital at all times. If Trust Company fails to maintain Tier 1 capital in the amount of \$10.0 million, Trust Company shall be deemed "undercapitalized," for purposes of 12 USC 1831o and 12 CFR 6, and the OCC shall have the authority to take any action authorized under all provisions of 12 USC 1831o and 12 CFR 6 applicable to an undercapitalized national bank. For purposes of 12 USC 1831o(e)(5), an action "necessary to carry out the purpose of this section" shall include restoration of Trust Company's capital so that it is not "undercapitalized," and any other action deemed advisable by the OCC to address Trust Company's capital deficiency or the safety and soundness of its operations.

The conditions of this approval are conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818 and as such, the conditions are enforceable under 12 USC 1818.

The OCC is currently reviewing its capital and liquidity policy with respect to national trust banks. Should there be a change in our policy as a result of the review, we will advise you accordingly. In addition, if Trust Company's future assets under management increase significantly, or if Trust Company assumes additional risk, the OCC may conclude that increased capital is required.

The OCC poses no objection to the following person(s) serving as executive officer(s), directors, and/or organizers as proposed in the application:

G. Michael Richwine, Director & President
Robert D. Kane, Director & Senior Vice-President, CFO
Robert A. McArthur, Director, First Vice President, & Credit Manager
John P. DeLuca, Director
Gerald F. Joyce Jr., Director
Daniel J. Walsh, Director

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¹ If such deviation is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

Richard D. Leigh, Senior Vice President
Craig N. Wright, Secretary

Prior to opening, Trust Company must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a two-year period after it commences business, Trust Company must file an Interagency Biographical and Financial Report with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

The "Corporate Organization" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing the trust company. The booklet is located at the OCC's web site: www.occ.treas.gov/corpbook/group1/public/pdf/corpgorg.pdf. The booklet contains all of the steps you must take to receive your charter.

As detailed in the booklet, you may establish the corporate existence of and begin organizing Trust Company as soon as you adopt and forward Articles of Association and the Organization Certificate to this office for our review and acceptance. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval. Trust Company may not begin the business of banking and engaging in fiduciary activities until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. Trust Company must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before Trust Company begins operation.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the Comptroller's Licensing Manual, which is available only in electronic form at our web site: <http://www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html>.

This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States (U.S.), any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and

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regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

If you have any questions with regard to this letter, please contact me at 212-790-4055.

Sincerely,

signed

Sandya Reddy
Senior Licensing Analyst

Enclosures: Standard Requirements
Minimum Policies and Procedures

Standard Requirements

HSBC Trust Company (Delaware), National Association (Bank) must meet the following standard requirements:

- Organizers must notify the OCC promptly and obtain the OCC's written determination of no objection for any significant deviation or change during the organization phase. A significant deviation or change that has not received the OCC's written determination of no objection may be grounds for delaying issuance of the charter or withdrawing preliminary conditional approval. (See the Significant Changes discussion in the Introduction of the "Corporate Organization" booklet.)
- For a period of two years after the Bank has opened for business, the Bank must file and obtain the OCC's written determination of no objection prior to any new executive officer or director assuming such position. Since this condition is imposed under the OCC's chartering authority, the OCC is not subject to the 30-day review period imposed by 12 U.S.C. 1831i. However, the OCC will process all such notices in a timely manner using the procedures in the "Change in Directors and Senior Executive Officers" booklet.
- The Bank's financial statements must be prepared on an accrual basis according to generally accepted accounting principles.
- The president must serve as a member of the board of directors.
- Each person who, together with their interests, subscribes to 10 percent or more of the initial stock offering must submit biographical and financial reports for review to the Licensing staff prior to acquisition of his or her shares. The Licensing staff must have no objection to each person before he or she purchases shares. After opening the Bank, requirements of the Change in Bank Control Act (12 U.S.C. 1817(j)) will apply. Changes in the composition of members or trustees of a voting trust or voting agreement also may be subject to the requirements of the Change in Bank Control Act.
- Stock subscription funds collected during the organization of the Bank and held for investment may be invested, directly or indirectly (e.g., mutual funds) only in U.S. government securities (bills, bonds, or notes).
- Stock certificates must not be issued prior to the date the Bank opens for business, but must be issued immediately following the bank's opening.
- The Bank must have adequate fidelity insurance covering all persons authorized to collect, receive, or deposit funds from stock subscriptions. The Bank must purchase adequate fidelity bond coverage in accordance with 12 C.F.R. 7.2013, which lists four factors the directors should consider to determine adequacy. This insurance must be in force from the effective date of the registration statement until the Bank opens for business (see the "Corporate Organization" booklet).

- The board of directors must develop written policies and procedures that will guide the Bank's operations in a safe and sound manner. Those policies must be completed no later than the date of the applicant's request for a preopening examination. In addition, the board of directors must review and adopt the policies and procedures at its first meeting (see Appendixes, Minimum Policies and Procedures). The board of directors is responsible for regular review and modification of policies and procedures and for assuring continuous compliance with them.
- Organizational and pre-opening expenses significantly exceeding those projected in the application, and/or net capital significantly less than that projected in the application, is a basis for revocation of preliminary conditional approval. Capital adequacy is not the sole reason to determine the acceptability of organization costs. The OCC will evaluate the reasonableness of pre-opening expenses (see the "Corporate Organization" booklet).
- The limitations of the Bank's activities must be fully enumerated in the Bank's Articles of Association. Specifically, the articles must state clearly that: 1) the business of the association will be limited to that of a national trust bank; and 2) the Bank must obtain the prior written OCC approval before amending its Articles of Association to expand the scope of its activities and services.
- Any services performed by affiliates for the Bank and payments to said affiliates by the Bank will be rendered pursuant to contracts that comply with federal law and regulation, reflect safe and sound practices, and are at costs similar to those the Bank would pay an independent third party for the same services. The contracts must be submitted to the Assistant Deputy Comptroller for Large Bank Supervision for review prior to or at the time corporate existence is established.

Minimum Policies and Procedures

Some of these policies and procedures may not be applicable to special purpose banks. The board must adopt and monitor those policies and procedures applicable to the bank's activities.

1. Lending policy, including:
 - a. Fundamental elements of a sound loan policy as described in the "Loan Portfolio Management" booklet of the *Comptroller's Handbook*.
 - b. Loan administration procedures designed to ensure that no extensions of credit are granted without first obtaining and analyzing current and satisfactory credit information as well as satisfactory and, in the case of secured loans, perfected collateral documentation.
 - c. Internal loan review procedures to review periodically the loan portfolio to identify and categorize problem credits.
 - d. Board approval of management's review of the adequacy of the bank's allowance for possible loan losses and maintenance of an adequate allowance consistent with the comments in the "Allowance for Loan and Lease Losses" booklet of the *Comptroller's Handbook*.
 - e. Procedures to ensure that the bank:
 - Takes immediate and continuing action to protect its interest in any and all assets displaying any evidence of weakness.
 - Monitors concentrations of credit and safeguards against unsound concentrations of credit.
 - Prices its credits properly.
 - f. Procedures to ensure compliance with *all* applicable laws and regulations, including, for example, lending limits and loans to insiders.
2. Funds management, investment securities, and interest rate risk policies, including:
 - a. A funds management policy and strategies consistent with the comments in the "Funds Management" section 405 of the *Comptroller's Handbook*.
 - b. Procedures to enable the board and management to monitor liquidity and interest rate risk.

- c. Guidelines for the bank's use of brokered and other volatile funds with a specific description of the nature, extent, and purpose of their use. The policy should comply with 12 CFR 337.6 - Brokered Deposits.
 - d. An investment securities policy consistent with the comments in the "Investment Securities" section 203 of the *Comptroller's Handbook*; OCC Bulletin 96-69: Investment Securities: 12 CFR 1 - Final Rule dated 12/11/96; and OCC Bulletin 98-20: Investment Securities - Policy Statement dated 4/27/98, within which the bank must operate when purchasing and selling investment securities. The policy should specifically define the bank's investment strategies.
 - e. A borrowed funds policy consistent with the comments in the "Borrowed Funds" section 302 of the *Comptroller's Handbook*.
 - f. An interest rate risk policy and strategy consistent with comments in the "Interest Rate Risk" booklet of the *Comptroller's Handbook* and OCC Bulletin 96-36: Interest Rate Risk - Final Policy Statement dated 7/12/96.
3. Capital policy, including:
- a. Specific plans to maintain capital at a level consistent with the requirements of 12 CFR 3. [For trust bank charters: Specific plans to maintain capital at an acceptable level, addressing the risks unique to this type of business, should be established.]
 - b. Procedures to develop and maintain a three-year capital plan, with projections for growth and capital requirements based on a detailed analysis of the bank's assets, liabilities, earnings, fixed asset expansion, and dividends.
 - c. A dividend policy consistent with the three-year capital plan and the bank's plans to maintain capital at or above the level required by 12 CFR 3 (or an otherwise adequate level as approved by the OCC).
 - d. Procedures to develop annual profit plans that contain realistic and comprehensive budgets (with projected balance sheets and year-end income statements) and to describe the operating assumptions that form the basis of the projections.
 - e. A process whereby the bank periodically reviews the policy to ensure it reflects any changes in laws, rules, or regulations pertaining to capital and dividends.
4. Internal and external audit policies, including:
- a. The development and implementation of an internal control system,

including internal and external audit functions, that provides for effective risk assessment, timely and accurate reports, safeguarding and management of assets, and compliance with applicable laws and regulations. The audit functions and control systems should be consistent with the “Internal and External Audit” and “Internal Controls” booklets of the *Comptroller’s Handbook*.

For additional reference, see the OCC’s *The Directors Book: The Role of the National Bank Director*; OCC Bulletin 98-1: Interagency Policy Statement -- Internal Audit/Outsourcing dated 1/7/98; and OCC Bulletin 99-37: Interagency Policy Statement on External Audit Programs dated 10/7/99.

- b. Procedures to ensure that the bank maintains minimum security devices and procedures as required by 12 CFR 21.
 - c. Internal control systems to ensure ongoing compliance with the currency reporting and recordkeeping requirements of the Bank Secrecy Act (BSA). Personnel should be trained in BSA procedures and one or more persons designated to monitor day-to-day compliance.
 - d. [If applicable] The development and implementation of a fiduciary audit program to ensure that the bank is complying with 12 CFR 9, applicable state and federal law, and sound fiduciary principles. Also required (12 CFR 9.9) are the appointment and establishment of a trust audit committee.
5. Insider policies, including:
- a. The development and implementation of a written policy according to the “Insiders Activities” booklet of the *Comptroller’s Handbook*.
 - b. [Applicable to trust banks] Written policies and procedures, as required by 12 CFR 9.5 to prohibit the use of material side information in investment decisions or recommendations.
6. Compliance policies, including, if applicable:
- a. A compliance program covering consumer, fair lending, and community laws and regulations, approved by the board and management, that includes (see the Compliance Handbook):
 - Delegation of compliance responsibilities to specific bank personnel.
 - Written guidance for, and training of, employees covering applicable laws and regulations.
 - A mechanism to report deficiencies and ensure corrective action.

- b. Branch closing policy (applicable to national banks with branches), including:
- Procedures for determining objectively which branch or branches to close and which customers to notify.
 - Procedures and methods for providing the notices required by 12 USC 1831r-1.
- c. A BSA program to fulfill the requirements of 12 CFR 21.21. The board of directors for each national bank must approve written procedures designed to monitor the bank's compliance with the requirements of the Bank Secrecy Act regulations, 31 CFR 103. The compliance program must provide for a system of internal controls to ensure ongoing compliance; provide independent testing for compliance; designate a person responsible for coordinating and monitoring day-to-day compliance; and provide training for appropriate personnel. The BSA compliance program must be approved by the board of directors.
- d. [If applicable] Development and implementation of policies and procedures for the administration of the rules governing securities transactions for broker-dealer activities. These include banking laws and regulations under 12 CFR 1, 12 CFR 10, 12 CFR 12, 15 USC 78o (Municipal Securities Rulemaking Board rules), and 17 CFR 400 (regulations under section 15C of the Securities Exchange Act of 1934 as amended by the Government Securities Act of 1986). In addition, the procedures should be consistent with the Securities Exchange Act of 1934 and the SEC's rules, specifically 17 CFR (commodity and securities).

The procedures should address:

- Municipal and government securities dealer registration and professional qualifications.
 - Trading and underwriting.
 - Sales and uniform practices.
 - Recordkeeping and retention.
 - Supervision.
- e. Development and implementation of procedures for the preparation, review for accuracy, and submission of required regulatory reports. The procedures should address:

- The requirements that the bank prepare all financial statements on an accrual basis according to generally accepted accounting principles.
 - Regular financial report filings (such as Quarterly Reports of Condition and Income, Annual Report of Trust Assets and Special Report of Trust Activities, as applicable, annual financial disclosures (12 CFR 18), and annual minimum security devices and procedures report).
 - Operations reports (such as bank robbery notification reports).
 - SEC reports (for covered banks).
 - Reports to shareholders.
 - Other reports as detailed in the *Comptroller's Handbook*.
7. Board supervision policy consistent with the “Duties and Responsibilities” booklet of the *Comptroller's Handbook* and *The Directors Book*, including:
- a. A method for periodically reviewing and revising, as necessary, the aforementioned policies.
 - b. Procedures to assess management’s performance.
 - c. A method to assess whether board members are receiving adequate information on the bank’s operation to enable them to fulfill their fiduciary responsibilities.
 - d. A method to evaluate whether board members are acting responsibly and expeditiously in fulfilling their duties as directors.
8. Disaster recovery plan.
9. Policies and procedures for maintaining the privacy and security of consumer information, including:
- a. Establishing privacy policies and opt out mechanisms (if appropriate) in accordance with 12 C.F.R. Part 40. This includes:
 - Developing privacy notices
 - Delivering initial and annual notices on timely basis
 - Revising privacy notices as necessary
 - Developing acceptable methods of delivery
 - Implementing consumer opt out elections where applicable
 - Limiting disclosure of account numbers for marketing purposes

- Limiting use and disclosure of information received from nonaffiliated financial institutions. Developing confidentiality contract clauses where applicable.

- b. Implementing training programs for employees about privacy policies and procedures.

- c. Adopting internal controls, policies, and audit procedures to ensure continued compliance with privacy regulations.

- d. Implementing a written information security program to safeguard customer information pursuant to the guidelines in 12 C.F.R. part 30. This includes:
 - Board approval and oversight of program
 - Assessing risks to security of customer information
 - Designing information security program to control identified risks
 - Overseeing arrangements with service providers
 - Adjusting program in light of changes in technology, threats to information, sensitivity of customer information, changing business arrangements.