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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C. 20219

**Interpretive Letter #877**  
**January 2000**  
**12 USC 92**  
**12 USC 92a**

December 13, 1999

Re: [ ] (“Trust Co.”)

Dear [ ]:

This responds to your request for confirmation that [ ] (“Trust Co.”) may sell insurance pursuant to 12 U.S.C. § 92 from a trust office located in a place with a population of 5,000 or fewer inhabitants. As we describe below, if the trust office performs “core fiduciary functions” at its office in that “place,” then the Trust Co. may sell insurance pursuant to 12 U.S.C. § 92 from that trust office.

### **I. Background**

Trust Co. is an uninsured, limited purpose national bank. Trust Co. specializes in preneed funeral trusts. Trust Co. is also engaged in (1) estate planning, including making recommendations on the use of trusts and the availability of tax minimization strategies, and (2) establishing trusts in connection with court settlements, generally for minors or incapacitated individuals.<sup>1</sup>

Trust Co.’s main office is in [ *City* ]. It proposes establishing an office in [ *City2* ], which it describes as a place with a population of 5,000 or fewer inhabitants. Trust Co. views [ *City2* ] as a strong potential market for its trust products. Trust Co. plans to actively market its products and services at this proposed office and to offer the local community a full range of the bank’s trust services. At the [ *City2* ] office, Trust Co. proposes to sell life insurance as agent and to sell other forms of insurance.<sup>2</sup> Trust Co. will obtain a [*State*] insurance license. Trust Co. represents that it

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<sup>1</sup> For example, funds received in connection with a settlement in a car accident case for a minor (who might be unable to hold assets in his/her own name) might be placed partly in a trust (with funds available for immediate medical needs) and partly in a structured annuity (with funds, for example, available for college). The trust and/or annuity may be held by the guardian *ad litem*, and/or family member of the minor.

<sup>2</sup>Trust Co. suggests that it might seek to sell, as agent, insurance for property held by trusts and any other insurance as appropriate for existing trust customers. In any purchase for a trust customer, Trust Co. would comply with all applicable conflict of interest provisions. See 12 CFR § 9.12. Trust Co. also plans to sell variable annuities as

will comply with OCC guidance on sales of insurance and annuity products and conform to all applicable [ *State* ] and OCC requirements on sales of insurance. Trust Co. has inquired whether it may engage in the proposed insurance sales from the [ *City2* ] office under 12 U.S.C. § 92.

## II. Legal Analysis

### A. OCC May Charter Limited Purpose Trust Banks That Conduct Annuity Sales and Insurance Agency Activities

The OCC may charter national banks that offer a full or limited range of banking products and services. The OCC may grant a national bank charter to special purpose banks, such as trust banks, that engage in a limited range of banking activities.<sup>3</sup> With respect to trust banks, this authority is expressly acknowledged in the National Bank Act, which provides that a bank “is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.” 12 U.S.C. § 27(a).<sup>4</sup>

The OCC may establish limits on the authorities of trust banks in the chartering process by imposing conditions in the approval or requiring limiting language in the Articles of Association. The OCC has not limited the operations of trust banks to the exercise of fiduciary powers, but has permitted a range of incidental and nonfiduciary activities.<sup>5</sup> The OCC, when it chartered Trust Co., did not restrict or address its insurance agency activities. Hence, Trust Co.’s charter is sufficiently broad to encompass its proposed insurance and annuity sales.<sup>6</sup>

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agent, generally in connection with its court settlement business. This activity is clearly permissible under Section 24(Seventh), without regard to Section 92. It is well established that national banks may sell annuities, and that there are no geographic restrictions on these activities. 12 USC § 24(Seventh); *NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1995).

<sup>3</sup> 12 C.F.R. § 5.20(l).

<sup>4</sup> This last sentence in section 27(a) was added following a challenge to the OCC’s authority to charter trust banks. See *National State Bank of Elizabeth, N.J. v. Smith*, 591 F.2d 223 (3d Cir. 1979).

<sup>5</sup> For example, the OCC has indicated that safekeeping and safe deposit services, while not fiduciary activities under section 92a, are related to the business of a trust company and therefore permissible under section 27. Letter from James M. Kane, District Counsel, dated June 20, 1985.

<sup>6</sup>Trust Co.’s articles of association currently provide that “[t]he business of the association will be limited to the operations of a trust department, and to support activities incidental thereto.” Trust Co. has represented that it plans to revise its Articles of Association to clarify that it may engage in activities of a “trust company and activities related or convenient thereto.”

**B. A Limited Purpose Trust Bank May Act as an Insurance Agent under 12 U.S.C. § 92 through a Trust Office in a Place of 5,000 or Fewer Inhabitants**

In order to sell insurance under the authority of 12 U.S.C. § 92, Trust Co. must be “located and doing business” in a place of 5,000 or fewer inhabitants. In the past, the OCC has found that a bank is “located and doing business” in a place under section 92 if the bank has a branch office or its main office at that place. Trust Co. does not take deposits, offer checking accounts, or make loans; that is, it does not engage in branching activities as defined in 12 U.S.C. § 36(j). Therefore, Trust Co. cannot establish a “branch,” and its main office is not located in a place of 5,000. Trust Co. has proposed that it would establish a trust office in a place with a population of 5,000 or fewer inhabitants where it would conduct its insurance sales.

Trust Co.’s proposal raises the issue of whether its proposed trust office is a sufficient presence to satisfy the “located and doing business” requirement of section 92. While there is no precedent on this precise point, the OCC recently considered where a bank is “located” for purposes of providing trust services under another statute, 12 U.S.C. § 92a.<sup>7</sup> As discussed below, we believe it is reasonable to conclude that a bank that is located in a place for purposes of providing trust services under section 92a should also be “located and doing business” in the place for purposes of section 92.

**1. A Trust Bank Is Located Where It Performs Core Fiduciary Functions For Purposes of Section 92a**

The OCC has determined that a bank with multistate offices is located for purposes of section 92a in the states where it acts in a fiduciary capacity and that a bank “acts in a fiduciary capacity” for section 92a purposes at the places at which the bank performs the core functions of a fiduciary. These core functions include accepting the appointment as fiduciary, executing the documents that create the fiduciary relationship, and making decisions regarding the investment or distribution of fiduciary assets.<sup>8</sup> If the [ *City2* ] office performs these functions, Trust Co. would be located at the [ *City2* ] office for purposes of section 92a.

**2. A Section 92a Location Can Also Be a Section 92 Location For a Trust Bank**

The OCC has not previously addressed whether a national trust bank may sell insurance under section 92 from a location where it maintains an office engaged in core fiduciary activities. The plain language of section 92, which considers where a bank is “located and doing business,” supports a finding that trust banks are located and doing business where they perform core fiduciary functions. Banks are

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<sup>7</sup> OCC Interpretive Letter No. 866 (October 8, 1999).

<sup>8</sup> *Id.*

“located and doing business” where they have a main office or branch, locations where they perform core banking activities.<sup>9</sup> National trust banks similarly are “located and doing business” through offices that perform their core fiduciary functions since those functions represent their primary lines of business.<sup>10</sup>

This conclusion is further supported by OCC precedent finding that trust banks are located at offices where they perform core fiduciary functions under section 92a, which provides statutory authority for national banks to engage in fiduciary activities. We believe a trust bank similarly is located and doing business at such offices for purposes of section 92, and may sell insurance from those locations. Hence, Trust Co. may sell insurance from its [ **City2** ] office if that office performs core fiduciary functions.

### III. Conclusion

The OCC may charter limited purpose trust banks that engage in activities of a trust company and activities related or convenient thereto, including sales of insurance under the authority of section 92. For purposes of section 92, trust banks are located at offices where they perform core fiduciary functions for purposes of section 92a. Accordingly, if a trust office located in a “place of 5,000” performs core fiduciary functions at that office, then the Trust Company may sell insurance pursuant to 12 U.S.C. § 92 from that office. We recommend that you contact your Examiner-in-Charge to discuss whether, in fact, the Trust Co.’s [ **City2** ] office would satisfy this standard.

Please contact Nancy Worth, Senior Attorney, at 202-874-5210 if you have any questions.

Sincerely,

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<sup>9</sup> See e.g., Interpretive Letter No. 824, reprinted in [1997-1998 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81-273 (Feb. 27, 1998); Interpretive Letter No. 823, reprinted in [1997-1998 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81-272 (Feb. 27, 1998).

<sup>10</sup> Section 92 states that, in addition to other powers vested in banks, any bank “located and doing business in any place the population of which does not exceed five thousand. . . may act as [insurance] agent. . . .” The statute does not define the type of presence required to be “located and doing business.” Nor does the legislative history of section 92 provide guidance on the type of presence required to be “located” in a place of less than 5,000 inhabitants. See *National Ass’n. of Life Underwriters v. Clarke*, 736 F. Supp. 1162, 1169 (D.D.C. 1990) (“NALU”), *rev’d on other grounds sub nom. Independent Ins. Agents v. Clarke*, 955 F.2d 731 (D.C. Cir.), *reh’g en banc denied*, 965 F.2d 1077 (D.C. Cir. 1992), *rev’d and remanded sub nom. United States Nat’l Bank v. Independent Ins. Agents*, 124 L. Ed.2d 402 (U.S. 1993), *aff’d on remand, Independent Ins. Agents v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993) (Comptroller Williams’ letter is the only substantive legislative history on section 92’s insurance provision).

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