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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON A WRIT OF CERTIORARI FROM THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2025-001557

South Carolina Board of Financial Institutions ..... Respondent,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Petitioners.

APPENDIX

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December 18, 2025

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Jun 29 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master in Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents

---

RECORD ON APPEAL – VOLUME I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO. 2020-CP-22-0882
	)	
South Carolina Board of Financial Institutions,	)	
Plaintiff,	)	**CONSENT ORDER FOR REFERENCE**
v.	)	
	)	
CDM Corporation, Inc. and Guardian Fiduciary Services, LLC;	)	
Defendants.	)	
	)	

This is an action now pending on the non-jury roster by Plaintiff, South Carolina Board of Financial Institutions, for Declaratory Judgment and Permanent Injunction. It appears to the Court that the attorneys for both Parties request that this action be referred to the Honorable Joe Crosby, Master-in-Equity for Georgetown County.

Rule 53(b) of the South Carolina Rules of Civil Procedure allows the circuit court to refer actions to the Master-in-Equity if the parties consent. The Court concludes that this action should be referred to the Master.

NOW, THEREFORE, IT IS ORDERED that this action, including all claims asserted therein, shall be referred to the Master-in-Equity for Georgetown County to exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter with appeal directly to the South Carolina Court of Appeals as provided in Rule 53.

AND IT IS SO ORDERED.

March____, 2022
Georgetown, South Carolina

Presiding Judge, Fifteenth Judicial Circuit

WE SO MOVE:

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Georgetown Common Pleas

Case Caption: Board Of Financial Institutions South Carolina VS Cdm Corporation Inc , defendant, et al

Case Number: 2020CP2200882

Type: Order/Referred to Master or Special Referee

Resident Circuit Court Judge, 15th Judicial Circuit

s/Benjamin H. Culbertson, Judge Code 2148

ELECTRONICALLY FILED - 2022 Nov 03 4:13 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200882

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CASE NO. 2020-CP-22-0882
South Carolina Board of Financial Institutions,	)	
Plaintiff,	)	**ORDER**
vs.	)	
CDM Corporation, Inc. and Guardian Fiduciary Services, LLC,	)	
Defendants.	)	

This matter came before the Master-in-Equity on competing Motions for Summary Judgment brought by Defendants, CDM Corporation ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (together "Defendants"), and Plaintiff, South Carolina Board of Financial Institutions ("BOFI").

Plaintiff's motion sought (1) a declaration that Defendants violate the provisions of S.C. Code Ann. § 34-21-10 by serving as, and holding out to the public as offering the services of, trustee, guardian, conservator, personal representative or executor, and attorney-in-fact without first seeking and obtaining BOFI's prior written approval to undertake such activity; and (2) a permanent injunction prohibiting Defendants from continuing such activity; and (3) dismissal of Defendants' counterclaims.

Defendants' motion sought summary judgment on their counterclaim for declaratory judgment of the grounds that (1) as a matter of South Carolina law, a "trust business," as contemplated by S.C. Code Ann. § 34-21-10, must involve a trust; (2) CDM and Guardian, to the extent they serve as non-trustee fiduciaries including personal representatives of estates or executors, attorneys-in-fact, guardians, or conservators, are not

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acting as a trust businesses; and (3) non-trustee fiduciary roles are controlled via the South Carolina Probate Code, not the Board of Financial Institutions.

The motions present clearly legal issues based on undisputed facts. For the following reasons, the Court grants Defendants' Motion for Summary Judgment and the Court grants in part and denies in part Plaintiff's Motion for Summary Judgment, as explained in greater detail below.

UNDISPUTED FACTS

CDM and Guardian were founded by Stephen P. Mantell in 2009 and 2011, respectively. This lawsuit was filed October 26, 2020. At that time, CDM and Guardian were serving in the roles of trustee, guardian, conservator, personal representative or executor, and power of attorney for clients across South Carolina.

The Board of Financial Institutions refers to both an agency of the State of South Carolina and the eleven-member regulatory board which it serves. The Agency has two divisions: the Consumer Finance Division and the Banking Division. The Banking Division, headed by the Commissioner of Banking, is tasked with the supervision of various financial institutions. *See* S.C. Section 34-21-20.

On and before the date this action was instituted, Defendants' shared website advertised the services of "trusteeship," "power of attorney," "personal representative," "guardianship," and "conservator." Defendants admit to this textual content of their shared website, which held the companies out to the public as providing these fiduciary services. Defendants further admit that they have never made a written application to BOFI to conduct these activities in South Carolina, nor have they received written permission from the Board.

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After BOFI instituted this lawsuit and after conferring with counsel, Mr. Mantell removed all references to trusteeships from his companies' promotional material. Further, for those matters in which CDM was named as a trustee, Mr. Mantell retained counsel to end or to move those trusteeships to his name personally.[1] Defendants concede that their serving as trustee without prior approval from BOFIviolates S.C. Code § 34-21-10, and represent to the Court through counsel that they have, since the institution of this matter, ceased serving as trustee of any trust.

LEGAL STANDARDS

Rule 56(c) of the South Carolina Rules of Civil Procedure requires the Court to grant summary judgment "when it is clear that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Smith v. T.H. Snipes & Sons, Inc.*, 306 S.C. 289, 291, 411 S.E.2d 439, 440 (1991). The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of any one of the essential elements of the party's case. *Fender & Latham, Inc. v. First Union Nat. Bank of South Carolina*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994), *citing Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

In the case of statutory construction, the language of the statute must be given its plain and ordinary meaning. *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994).

ANALYSIS

The Parties dispute whether S.C. Code § 34-21-10, or any other law or regulation, prohibits companies from serving in non-trustee fiduciary roles such as a guardian,

[1] At no time was Defendant Guardian ever named as trustee on any trust.

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conservator, personal representative or executor, or power of attorney without BOFI's prior written approval.

1. **As a matter of law, the term "trust business," as contemplated by Section 34-21-10 must involve a trust.**

South Carolina Code Section 34-21-10 provides as follows:

> No corporation, partnership or other person shall conduct a **trust business** in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. Before any such application shall be approved, the Board shall make an investigation to determine whether or not the applicant has complied with all the provisions of law, whether in the judgment of the Board the applicant is qualified to conduct such a business and whether the conduct of such a business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

S.C. Code Ann. § 34-21-10 (emphasis added).

Based on this statute, along with S.C. Code §34-21-20, BOFI has approval and regulatory authority over non-exempt persons who conduct a trust business in this State. Such non-exempt persons violate Section 34-21-10 if they conduct a trust business in this State without the prior written approval of BOFI. The question is what constitutes conducting a trust business in this State.

The South Carolina Code does not define the term "trust business," and the term has not been defined by the South Carolina courts. Where the legislature elects not to define a term used in a statute, South Carolina courts must interpret the term in accord with its "usual and customary meaning." *Adoptive Parents v. Biological Parents*, 315 S.C. 535,

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446 S.E.2d 404 (1994). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *City of Camden v. Brassell*, 486 S.E.2d 492, 494–95, 326 S.C. 556, 560–61 (Ct. App. 1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

While there are many available legal definitions of a trust, the usual and customary meaning aligns with the definition found in Black's Law Dictionary: "An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery." *See* https://thelawdictionary.org/trust/.

Logically, the usual and customary definition of a "trust business" is a business involved with the administration of trusts. *See*, 9 C.J.S. Banks and Banking § 650 ("It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts, rather than carry on the ordinary functions of banking."); *Loudoun Nat. Bank of Leesburg v. Continental Trust Co.*, 180 S.E. 548, 551, 164 Va. 536, 543 (Va. 1935) ("The primary and ordinary conception of a trust company is a corporation to take and administer trusts.").

Moreover, the South Carolina Probate Code, by its terms, specifically excludes other non-trustee fiduciary roles from the definition of a "Trust." Section 62-1-201(49) of the Probate Code defines the term "trust" as follows:

> "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. ***"Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships,***

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> ***personal representatives,*** trust accounts as defined in Article 6 (Sections 62-6-101, et seq.), custodial arrangements pursuant to the South Carolina Uniform Transfers to Minors Act, Article 6, Chapter 5, Title 63, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

S.C. Code Ann. § 62-1-201. (emphasis added). The Probate Code's explicit exclusion of these non-trustee fiduciary roles from the definition of trust, confirms that these activities are not included in the definition of the term "trust business" as contemplated by Section 34-21-10.

2. Defendants violated Section 34-21-10 by serving as, and holding themselves out to serve as a trustee without prior approval of BOFI, and are permanently enjoined from doing so absent satisfaction of the requirements set forth in the South Carolina Code.

The Defendants have admitted, and the evidence shows, that Defendant CDM held itself out as a trustee and served in the role of trustee for four trusts without written approval from BOFI, as required by statute. The Court concludes that Defendants' actions in serving as trustee and holding themselves out to the public as serving as trustee constitute "trust business" which necessitated the Board's prior approval pursuant to S.C. Code 34-21-10. As Defendants did not obtain prior BOFI approval, Defendants violated S.C. Code 34-21-10. The Court therefore grants Plaintiff's Motion for Summary Judgment declaring that Defendants served as trustee and held themselves out as trustee in violation of South Carolina Law. The Court further permanently enjoins Defendants from serving as and/or holding themselves out as trustee absent satisfaction of the requirements set forth in S.C. Code Section 34-21-10.

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3. Non-trustee fiduciary roles are controlled via the South Carolina Probate Code, not the Board of Financial Institutions.

The South Carolina Probate Code specifically sets forth the requirements and regulations for, and the probate court's appointment of, non-trustee fiduciary roles including conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor. *See e.g.* S.C. Code §§ 62-5-308; 62-5-408; 62-5-405; 62-8-102(1); 62-3-203. Because these roles are codified in the Probate Code and are regulated by the probate courts, the Board of Financial Institutions does not control and regulate these functions. These areas are outside BOFI's jurisdiction. Therefore, Plaintiff's Motion to enjoin all other non-trustee fiduciary activities engaged in by Defendants is denied.

AND IT IS SO ORDERED

1. Defendants' Declaratory Judgment Counterclaim is GRANTED;

2. Plaintiff's Declaratory Judgment Claim is GRANTED as to Defendants' role as a trustee only and is DENIED as to Defendants' role as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor;

3. Plaintiff's Motion to permanently enjoin Defendants from serving as personal representatives of estates, attorneys-in-fact, guardians, or conservators is DENIED;

4. Plaintiff's Motion to permanently enjoin Defendants from acting, or holding itself as available to act as trustee without approval from the South Carolina Board of Financial Institutions pursuant to S.C. Code Section 34-21-10 is GRANTED;

5. This order constitutes final disposition of all issues in this case except for a determination of whether attorneys' fees may be appropriate under South Carolina Code Section 15-77-300.

_____

Joe M. Crosby
Master-In-Equity

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Georgetown Common Pleas

Case Caption:	Board Of Financial Institutions South Carolina VS Cdm Corporation Inc , defendant, et al
Case Number:	2020CP2200882
Type:	Order/Summary Judgment

So Ordered

s/ Joe M. Crosby 3072

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CASE NO. 2020-CP-22-0882
South Carolina Board of Financial Institutions,	)	
Plaintiff,	)	**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION**
vs.	)	
CDM Corporation, Inc. and Guardian Fiduciary Services, LLC,	)	
Defendants.	)	

This matter came before the Master-in-Equity on Plaintiff's Motion for Partial Reconsideration of this Court's November 3, 2022 Order addressing the parties' Motions for Summary Judgment. After review and consideration of Plaintiff's November 14, 2022 Motion and briefs of the parties, I deny Plaintiff's Motion.

IT IS SO ORDERED.

_____
Joe M. Crosby
Master-In-Equity

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Georgetown Common Pleas

Case Caption:	Board Of Financial Institutions South Carolina VS Cdm Corporation Inc , defendant, et al
Case Number:	2020CP2200882
Type:	Master/Order/Other

So Ordered

s/ Joe M. Crosby 3072

ELECTRONICALLY FILED - 2020 Oct 26 12:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-_____ **SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office located at 1200 Senate St., Suite 214, Wade Hampton Building, Columbia, SC 29201 within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Complaint within such time, the relief demanded in the Complaint will be rendered against you by default.

By: s/ Shawn D. Eubanks
Shawn. D. Eubanks (S.C. Bar No. 78370)

1200 Senate St., Suite 214
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Attorney for Board of Financial Institutions

October 26, 2020
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Oct 26 12:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP220882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
	)	CASE NO.: 2020-CP-22-_____
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	**COMPLAINT** (Non-Jury)

The Plaintiff, complaining of Defendants, would respectfully show unto this Honorable Court:

PARTIES AND JURISDICTION

1. Plaintiff Board of Financial Institutions, ("Plaintiff") is an agency of the State of South Carolina, located in Richland County. All references herein to the "Board" are references to Plaintiff.
2. Defendant CDM Corporation Inc. ("CDM") is an entity incorporated in the State of South Carolina, whose registered address 10698 Ocean Highway, Suite 100, Pawleys Island, Georgetown County, South Carolina, and whose main office is located at 11919 Plaza Drive, Murrells Inlet, Georgetown County, South Carolina. CDM's registered agent is Stephen P. Mantell.
3. Defendant Guardian Fiduciary Services, LLC ("Guardian") is a limited liability company incorporated in the State of South Carolina, sharing the same registered agent, registered address, physical office, and website as CDM.
4. This is an action for Declaratory Judgment and for Permanent Injunction.

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5. This Court has jurisdiction over the parties to and subject matter of this action, and venue is proper.

FACTS

6. CDM and Guardian are companies which hold themselves out as providing trust business services in South Carolina, and have performed trust business activities on numerous occasions.

7. Stephen P. Mantell purports to be the President for both CDM and Guardian, and serves as the registered agent for both entities.

8. The Plaintiff is a regulatory agency that serves to oversee financial institutions, including but not limited to regulating banks and trust companies.

9. As part of its duties, Plaintiff, and only Plaintiff, is afforded the statutory authority to approve, deny, and regulate all trust business activities by corporations, partnerships, or other persons in South Carolina, except for natural persons or national banks with principal places of business in South Carolina.

10. S.C. Code Ann. § 34-21-10 provides that "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to [the Board] and receiving written approval from the Board."

11. CDM and Guardian are not natural persons, nor are they national banking associations.

12. CDM and Guardian hold themselves out as offering trust business services including serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust.

13. On or before October 9, 2020, CDM and Guardian's joint website advertised "Power of Attorney" as a service offered, and states that "As Power of Attorney (POA), we serve in

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accordance with the specific instrument you have already completed for your Durable, Medical or Financial Power of Attorney needs."

14. On or before October 9, 2020, CDM and Guardian's joint website advertised "Trusteeship" as a service offered, and provides that CDM and Guardian "administer and safeguard the assets held in the trust."

15. On or before October 9, 2020, CDM and Guardian's joint website advertised "Personal Representative" as a service offered, and states that "As Personal Representative (PR), we act in accordance with the Court-ordered process of administering a decedent's estate."

16. On or before October 9, 2020, CDM and Guardian's joint website advertised "Guardianship" as a service offered, and provides that CDM and Guardian is "a certified professional guardian agency with two certified guardians on staff."

17. CDM and Guardian continue to hold themselves out to the public as providing these services.

18. CDM and Guardian have provided and are currently engaged in providing trust business services, including serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust.

19. Since 2016, CDM and Guardian have served as conservator for at least 12 individuals, as Attorney-in-Fact pursuant to power of attorney for at least 9 individuals, as trustee for at least 10 trusts, as Personal Representative for at least 16 estates, and as guardian for at least one individual. Upon information and belief, CDM and Guardian continue to serve in some or all of these roles, as of the date of this action.

20. CDM and Guardian's appointments to these roles have occurred across the State of South Carolina, including but not limited to Aiken, Beaufort, Florence, Greenville, Georgetown, Horry, Marion, Newberry, Richland and Sumter.

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21. In rendering its trust business services, CDM and/or Guardian are appointed to fiduciary roles under their organizational names, and also by and through Stephen P. Mantell, acting as agent and representative of CDM and Guardian. In either case, CDM and/or Guardian are the principal appointee, and Mantell is named in his capacity as agent rather than his individual capacity as a natural person.

22. CDM and Guardian are not natural persons, nor are they national banking associations, and therefore may not conduct trust business, nor hold themselves out as providing trust business services, without making a written application applying to Plaintiff requesting Plaintiff's written approval to conduct a trust business, and receiving such written approval from Plaintiff.

23. CDM and Guardian have never applied to Plaintiff requesting Plaintiff's written approval to conduct a trust business, nor have they been given such approval, written or otherwise, by Plaintiff.

FIRST CAUSE OF ACTION
Declaratory Judgment – Unlawful Trust Business

24. Plaintiff incorporates each and every allegation contained in the foregoing paragraphs as if fully realleged and reasserted alleged herein verbatim.

25. This action for declaratory judgment is brought pursuant to Rule 57, SCRCP, and the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq.

26. S.C. Code Ann. § 34-21-10 provides that "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to [the Board] and receiving written approval from the Board."

27. Conducting trust business includes acting as trustee for a trust, serving as an executor or personal representative of an estate, serving as an administrator or attorney-in-fact as a power

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of attorney, serving as a guardian, serving as a conservator, as well as holding oneself out as offering or providing these services.

28. The following operations of CDM and Guardian constitute conducting a trust business:

    a. Serving as a conservator;

    b. Serving as a guardian;

    c. Serving as an attorney-in-fact in accordance with a power of attorney;

    d. Serving as a personal representative or executor;

    e. Serving as a trustee of a trust;

    f. Holding themselves out to the public as providing these services.

29. CDM and Guardian are not national banking associations, nor are they natural persons.

30. CDM and Guardian have not obtained approval from Plaintiff to conduct trust business as required by S.C. Code Ann. § 34-21-10.

31. CDM and Guardian's unauthorized trust business operations violate the law of the State of South Carolina.

32. Plaintiff therefore requests that this Court declare that CDM and Guardian's actions alleged herein constitute conducting trust business operations in South Carolina which are properly regulated by Plaintiff;

33. Plaintiff further requests that, upon finding that CDM and Guardian's actions constitute conducting trust business in South Carolina, the Court declare those trust business operations are unlawful as they are not authorized by Plaintiff, and order Defendants to forever cease and desist from providing such services in the State of South Carolina without the prior approval of Plaintiff.

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SECOND CAUSE OF ACTION
Injunctive Relief

34. Plaintiff incorporates each and every allegation contained in the foregoing paragraphs as if fully realleged and reasserted alleged herein verbatim.

35. CDM and Guardian's unauthorized and unlawful trust activity pose a significant, ongoing threat of irreparable harm to Plaintiff, including but not limited to the erosion of Plaintiff's authority to enforce the law regarding trust companies, and erosion of public confidence in Plaintiff's authority, harming Plaintiff and its ability to carry out its duties.

36. CDM and Guardian's unauthorized and unlawful trust activity pose a significant, ongoing threat of irreparable harm to the most vulnerable citizens of the State of South Carolina, including but not limited to the following:

    a. unsupervised, unqualified and/or inadequate rendering of services, including oversight of highly sensitive financial information, access to individuals' assets and accounts leading to significant financial mishandling;

    b. inadequate capitalization, insurance, and bonding, which would under-insure or fail to insure customers against loss;

    c. unsupervised, unqualified and/or inadequate handling of health information, and critical decisions as to the life, health and well-being of the individuals.

37. The balance of equities favors an injunction barring CDM and Guardian's conducting trust business unless and until such time as Defendants apply for and receive Plaintiff's written approval to conduct trust business. Compared to the threat of irreparable harm to these vulnerable individuals, as well as the erosion of Plaintiff's authority, and the public confidence therein, which would occur if a permanent injunction is not granted, the harm to CDM and Guardian caused by an injunction enjoining their unlawful activity is minimal.

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38. Plaintiff's role as regulator and gatekeeper of trust company authorization gives it standing to seek an injunction against those entities who conduct trust business without Plaintiff's express written authorization to do so.

39. A permanent injunction is the only adequate remedy to give effect to Plaintiff's statutory authority, ensure public confidence in Plaintiff's authority over trust businesses, and protect the citizens of the State of South Carolina from CDM and Guardian's unlawful and unauthorized operations as a trust business, serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust, as well as holding themselves out as providing these services.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants and prays for the following relief:

a. That the Court declare CDM and Guardian's operations serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust, as well as their actions in holding themselves out as providing these services, without Plaintiff's approval, to be in violation of the provisions of S.C. Code Ann. § 34-21-10;

b. That the Court declare CDM and Guardian to violate the provisions of S.C. Code Ann. § 34-21-10 *et seq.* when their individual agent or representative serves as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, or trustee of a trust, or holds himself out as providing these services;

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c. That the Court enter a permanent injunction against CDM and Guardian barring them from conducting trust business services of any kind, and from holding themselves out as providing such services, unless and until such time as Defendants apply for and receive Plaintiff's written approval to conduct trust business, as required by S.C. Code Ann. § 34-21-10;

d. That the Court enter an Order which sets forth the timely and orderly dissolution of CDM and Guardian's trust business appointments in a manner which sufficiently protects the interests and well-being of the individuals and trusts for whom CDM and Guardian have purported to act; and

e. That the Court order such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: s/ Shawn D. Eubanks
Shawn. D. Eubanks (S.C. Bar No. 78370)
William J. Condon, Jr. (S.C. Bar No. 72632)

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Attorneys for Board of Financial Institutions

October 26, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2020-CP-22-0882 **ANSWER AND COUNTERCLAIM**

Defendants CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (together, "Defendants"), file this Answer and Counterclaim in response to the Complaint filed by Plaintiff South Carolina Board of Financial Institutions ("BOFI" or "Plaintiff").

FOR A FIRST DEFENSE
(General Denial)

Except as specifically admitted, modified or explained herein, each and every allegation of the Plaintiff's Complaint is expressly denied. As to the correspondingly numbered paragraphs of the Complaint, Defendants respond as follows:

FOR A SECOND DEFENSE
(Specific Denial)

1. Defendants admit the allegations of Paragraph 1.

2. Defendants admit the allegations of Paragraph 2.

3. Defendants admit the allegations of Paragraph 3.

4. The allegations of Paragraph 4 require no response from Defendants. To the extent a response is required, Defendants deny the allegations and legal conclusions set forth in Plaintiff's

Declaratory Judgment Action, and further deny that a Permanent Injunction is necessary or appropriate in these circumstances.

5. The allegations of Paragraph 5 state legal conclusions to which no response is required.

FACTS

6. Defendants deny the allegations of Paragraph 6.

7. Defendants admit the allegations of Paragraph 7.

8. Defendants admit the allegations of Paragraph 8.

9. The allegations of Paragraph 9 state legal conclusions to which no response is required.

10. Responding to the allegations of Paragraph 10, the cited statute speaks for itself, and Defendants deny any allegations inconsistent with the statute.

11. Defendants admit the allegations of Paragraph 11.

12. Defendants deny the allegations of Paragraph 12. At this time, Defendants do not hold themselves out as offering any services related to trusts.

13. Responding to the allegations of Paragraph 13, the cited website speaks for itself, and Defendants deny any allegations inconsistent with the website.

14. Responding to the allegations of Paragraph 14, the cited website speaks for itself, and Defendants deny any allegations inconsistent with the website. Defendants specifically deny that the cited website currently includes any references to "Trusteeship."

15. Responding to the allegations of Paragraph 15, the cited website speaks for itself, and Defendants deny any allegations inconsistent with the website.

16. Responding to the allegations of Paragraph 16, the cited website speaks for itself, and Defendants deny any allegations inconsistent with the website.

17. Defendants deny the allegations of Paragraph 17. At this time, Defendants do not hold themselves out as offering any services related to trusts.

18. Defendants deny the allegations of Paragraph 18.

19. Defendants deny the allegations of Paragraph 19. As of the date of this Answer, Defendants have either extricated themselves from all matters involving a trust, or have taken affirmative steps to extricate themselves from matters involving a trust.

20. Defendants admit the allegations of Paragraph 20.

21. Responding to the allegations of Paragraph 21, Defendants admit only that when appointed to various roles, the companies are generally appointed by and through their principal, Stephen Mantell. Defendants specifically deny that the services they currently perform constitute "trust business services." The remaining allegations of this paragraph are legal conclusions to which no response is required. As of the date of this Answer, Defendants have either extricated themselves from all matters involving a trust, or have taken affirmative steps to extricate themselves from all matters involving a trust.

22. Responding to the allegations of Paragraph 22, Defendants admit they are not natural persons or national banking associations. The remaining allegations of Paragraph 22 state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

23. Defendants deny the allegations of Paragraph 23. See Paragraph 13, below.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Declaratory Judgment-Unlawful Trust Business)

24. Defendants incorporate by reference their responses to the allegations of Paragraphs 1-23, above, as if repeated verbatim.

25. The allegations of Paragraph 25 require no response from Defendants.

26. Responding to the allegations of Paragraph 26, the cited statute speaks for itself, and Defendants deny allegations inconsistent with the statute.

27. The allegations of Paragraph 27 state legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.

28. The allegations of Paragraph 28 state legal conclusions to which no response is required. To the extent a response is required, Defendants admit only that conducting trust business includes serving as a trustee of a trust. However, Defendants have either extricated themselves from all matters involving a trust, or have taken affirmative steps to extricate themselves from all matters involving a trust. Defendants deny that the remaining "operations" listed in Paragraph 28 constitute conducting a trust business.

29. Defendants admit the allegations of Paragraph 29.

30. Responding to the allegations of Paragraph 30, Defendants admit that BOFI has not approved Defendants to conduct "trust business." However, Defendants have either extricated themselves from all matters involving a trust, or have taken affirmative steps to extricate themselves from all matters involving a trust. As such, Defendants do not, as a matter of law, conduct trust business, and therefore do not require approval from BOFI. Further, Defendants contacted BOFI, and were told by BOFI that approval was not required for their businesses. See Paragraph 13, below.

31. Defendants deny the allegations of Paragraph 31.

32. Defendants deny the allegations of Paragraph 32.

33. Defendants deny the allegations of Paragraph 33.

AS TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Injunctive Relief)

34. Defendants incorporate by reference their responses to the allegations of Paragraphs 1-33, above, as if repeated verbatim.

35. Defendants deny the allegations of Paragraph 35.

36. Defendants deny the allegations of Paragraph 36. The large majority of Defendants' roles are directly supervised by the Courts.

37. Defendants deny the allegations of Paragraph 37.

38. The allegations of Paragraph 38 state legal conclusions to which no response is required.

39. Defendants deny the allegations of Paragraph 39.

40. Responding to the Prayer for Relief, Defendants deny that Plaintiff is entitled to the relief requested or any relief from Defendants.

FOR A THIRD DEFENSE TO PLAINTIFF'S COMPLAINT
(Failure to State a Claim)

41. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants and therefore must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Compliance with Applicable Law)

42. Defendants would show that any actions taken by Defendants were taken in good faith, that said actions were authorized by applicable law, and therefore, Plaintiff is precluded from recovery against Defendants. Accordingly, Plaintiff's claims should be dismissed in their entirety.

FOR A FIFTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Mootness)

43. Defendants would show that they have ceased any and all actions which potentially violate S.C. Code § 34-21-10. As such, Plaintiff's claim for injunctive relief is moot and should be dismissed.

FOR A SIXTH DEFENSE TO PLAINTIFF'S COMPLAINT
(Leave to Add Additional Defenses)

44. Defendants reserve their right to set forth further affirmative defenses as needed.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

Defendants CDM Corporation, Inc. and Guardian Fiduciary Services, LLC assert this counterclaim for declaratory judgment, showing the Court the following:

Jurisdiction and Venue

1. This is a compulsory counterclaim pursuant to S.C. R. Civ. P. 13.

2. This Court has jurisdiction over the parties and the subject matter of this counterclaim, and venue is proper.

Facts

3. Stephen P. Mantell ("Mr. Mantell") was born in England and first moved to the United States at the age of ten. He fought in the Vietnam War on behalf of the U.S. Navy.

4. Mr. Mantell moved permanently to South Carolina in 2003. In 2009, he founded a company called Senior Helpers. He was soon beset by requests from local attorneys asking him to assist their elderly clients.

5. Seeing an obvious need in the community, Mr. Mantell incorporated CDM

Corporation, Inc. with the Secretary of State in 2009. He serves as registered agent for CDM.

6. Mr. Mantell formed Guardian Fiduciary Services, LLC with the Secretary of State in 2011. He serves as registered agent for Guardian.

7. CDM and Guardian were formed for the purpose of providing needed services for elderly, disabled, and otherwise compromised individuals in South Carolina. Services include serving as a guardian, conservator, personal representative and power of attorney.

8. Nearly all of CDM and Guardian's clients are referred by Probate Court Judges and licensed South Carolina attorneys.

9. Typically, CDM and/or Guardian will serve as guardian or conservator in those cases in which the client has no family or any other contacts who are willing or able to serve in those roles.

10. Examples of CDM and Guardian's clients include a patient in a coma, a severely drug-addicted young person, and a mentally-ill person. These clients are not able to pay the large fees demanded by "trust companies" for their services.

11. In most cases, the services performed by CDM and Guardian are directly overseen by the Probate Court. In those cases, the Probate Court determines the appropriate fees for these services.

12. However, in many cases, and particularly for indigent clients, CDM and Guardian are not paid for their services.

13. In 2013, Mr. Mantell received his first request to serve as a trustee on behalf of a client. He contacted the Office of the South Carolina Commissioner of Banking to inquire whether his companies, CDM and Guardian, were permitted to serve in the role of trustee under South Carolina law. He explained the activities of his companies, and was told by the Office that, because

CDM and Guardian would not be managing investments on behalf of trusts, they need not complete an application to perform the services of a trust business. The Office did not provide a written opinion.

14. Defendants relied on the opinion of the Office of the South Carolina Commissioner of Banking, and subsequently served as trustee on behalf of a limited number of clients.

15. BOFI contacted Mr. Mantell in July 2020, and informed him that the activities performed by CDM and Guardian constituted a "trust business" and required approval from BOFI.

16. Mr. Mantell was surprised by BOFI's position in light of his inquiry to the Commission of Banking only seven years earlier.

17. Still, in an effort to comply with Plaintiff's request, CDM and Guardian removed all references to "trusteeship" or "trusts" from their shared website.

18. At the time of filing, CDM continues to serve as trustee for only four trusts. For each of these trusts, CDM has taken affirmative steps to remove itself as trustee. The trusts at issue are the following:

a. Clark A. Rogers Family Trust. The Primary Trustee is named as "CDM Corporation, d/b/a Senior Helpers, of and through its President and representative, Stephen P. Mantell."

b. Mary R. Rogers Investment Trust. The primary Trustee is named as "CDM Corporation, d/b/a Senior Helpers, of and through its President and representative, Stephen P. Mantell."

c. Revocable Trust Agreement of Thomas G. Anderson. The Trustee is named as "CDM Corporation, by and through it Representative, Stephen P. Mantell."

d. Patricia A. Fearson Revocable Trust. The Trustee is named as "CDM Corporation, Inc., by and through it representative, Stephen P. Mantell, its corporate successors or assigns."

19. As to the Clark Rogers and Mary Rogers trusts listed above, attorney Brian T. Treacy has been engaged to remove CDM as trustee.

20. As to the Thomas Anderson trust listed above, Mr. Anderson recently died of Covid-19. This is now an estate matter, and attorney James F. McCrackin has been engaged to represent the Estate and to remove CDM as trustee.

21. As to the Patricia Fearson Trust listed above, attorney Miles Adler has been engaged to remove CDM as trustee.

22. Guardian does not serve as trustee for any trusts.

23. Going forward, CDM and Guardian will refrain from servings as trustee in any new matters, and will no longer perform any roles related to trusts.

24. CDM and Guardian continue to serve as conservator, guardian, attorney-in-fact, and personal representative, frequently as a result of judicial appointment. However, CDM and Guardian do not perform these roles on behalf of trusts.

FIRST CAUSE OF ACTION
Declaratory Judgment

25. Defendants incorporate each and every allegation contained in the foregoing paragraphs as if fully realleged and reasserted herein.

26. This action for declaratory judgment is brought pursuant to Rule 57, SCRCP, and the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq*.

27. S.C. Code Ann. § 34-21-10 provides that "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to [the

Board] and receiving written approval from the Board."

28. The process for applying for BOFI approval to serve as a trust company in South Carolina is contained in the BOFI Banking Division Applications Manual, located online at https://banking.sc.gov/sites/default/files/Documents/Applications%20Manual%208-18-20%20-%20Final.pdf.

29. The required application fee to BOFI is a non-fundable Fifteen Thousand Dollars ($15,000). If a trust company is approved, it will be subject to regular examinations by BOFI, and must pay annual supervisory fees. The supervisory fees for trust companies in 2021 is Nineteen Thousand Six Hundred Dollars ($19,600).

30. The term "trust business" is not defined in § 34-21-10 or elsewhere in the South Carolina Code.

31. As a matter of South Carolina law, a "trust business," as contemplated by § 34-21-10, must involve a trust.

32. If a business is not involved with the maintenance or management of trusts, it is not a "trust business."

33. Going forward, the professional activities performed by CDM and Guardian will not involve trusts in any way. To the extent there are any lingering involvements with trusts, as referenced in Paragraph 18, above, CDM and Guardian are actively ending those involvements.

34. CDM and Guardian, to the extent they serve as executors, personal representatives of estates, attorneys-in-fact, guardians, or conservators, are not acting as "trust businesses" unless those services are performed on behalf of, or somehow relate to, a trust.

35. Because CDM and Guardian's activities are not performed on behalf of, or otherwise relate to, trusts, CDM and Guardian are not "trust businesses" as contemplated by § 34-

21-10. As such, CDM and Guardian are not subject to the application process set forth in the statute.

36. CDM and Guardian therefore request that this Court declare that CDM and Guardian's businesses do not constitute trust businesses, and are not regulated by BOFI.

37. Further, CDM and Guardian request that, upon finding that CDM and Guardian's businesses do not constitute trust businesses in South Carolina, the Court declare the businesses to be lawful, and not subject to regulation by BOFI.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray:

- That Plaintiff's Complaint be dismissed with prejudice;
- That the Court declare that CDM and Guardian are not "trust businesses" as contemplated by S.C. Code § 34-21-10;
- That the Court declare that CDM and Guardian are not subject to S.C. Code § 34-21-10;
- That Plaintiff be ordered to pay Defendants' fees and costs;
- That Defendants be accorded such other and further relief as the Court may deem just and proper.

[intentionally left blank, signature page follows]

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

s/ James D. Myrick

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Dated: December 11, 2020

ELECTRONICALLY FILED - 2020 Dec 23 11:25 AM - GEORGETOWN - COMMON PLEAS - CASE#2020CP220882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **REPLY**

Plaintiff Board of Financial Institutions ("Plaintiff") file this Reply in response to the Counterclaim filed by Defendants CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (collectively, "Defendants"), answering the allegations therein in accordance with the numbered paragraphs thereof, as follows:

Jurisdiction and Venue

1. Admitted in part, denied in part. Plaintiff admits that this action purports to be a counterclaim, but denies that it is proper under any law or rule of procedure.
2. Admitted.

Facts

3. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
4. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

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5. Admitted in part, denied in part. Plaintiff admits only that Stephen Mantell is the principal and registered agent for CDM. Plaintiff is without sufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies the same.
6. Admitted in part, denied in part. Plaintiff admits only that Stephen Mantell is the principal and registered agent for Guardian. Plaintiff is without sufficient knowledge to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies the same.
7. Admitted in part, denied in part. Plaintiff admits that CDM and Guardian were formed for the purpose of providing, and do unlawfully provide the services of trustee, guardian, conservator, personal representative, and power of attorney. The remaining allegations are denied.
8. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
9. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
10. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
11. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
12. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.
13. Admitted in part, denied in part. Plaintiff admits that Plaintiff did not provide a written opinion to CDM or Guardian. The remaining allegations are denied.
14. Denied.

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15. Admitted.

16. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

17. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same. Plaintiff specifically denies that Defendants have removed all references to trust business from their shared website.

18. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph or its subparts and, therefore, denies the same.

19. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

20. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

21. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph or its subparts and, therefore, denies the same.

22. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

23. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

24. Admitted in part, denied in part. Plaintiff admits that Defendants continue to unlawfully serve as conservator, guardian, attorney-in-fact, and personal representative. The remaining allegations are denied.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

25. Plaintiff incorporates its responses to the preceding paragraphs as if fully contained herein.

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26. Admitted.

27. Denied as stated. To the extent Defendant seeks to summarize the provisions of statute, Plaintiff defers to the language of S.C. Code Ann. § 34-21-10.

28. Admitted in part, denied in part. Plaintiff admits that, as of the date of this filing, Defendant has cited the correct internet address. The remaining allegations are denied.

29. Admitted.

30. Denied.

31. Denied.

32. Denied.

33. Plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

34. Denied.

35. Denied.

36. Plaintiff denies that Defendants are entitled to the relief requested, or any relief from Plaintiff.

37. Plaintiff denies that Defendants are entitled to the relief requested, or any relief from Plaintiff.

38. Responding to the Prayer for Relief, Plaintiff denies that Defendant is entitled to the relief requested, or any relief from Plaintiff.

FIRST AFFIRMATIVE DEFENSE

Plaintiff asserts the defense of sovereign immunity as a complete bar to Defendants' claims.

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SECOND AFFIRMATIVE DEFENSE

To the extent that the Defendants allege or assert claims against Plaintiff for damages, attorney's fees, or other remuneration beyond a declaration of rights, Plaintiff pleads the entire South Carolina Tort Claims Act, S.C. Code § 15-78-10, et seq., including all available defenses and limitations, prohibitions, or caps on damages.

THIRD AFFIRMATIVE DEFENSE

Pursuant to S.C. Code Ann. § 15-77-300, attorney's fees may not be awarded to Defendant as this is a civil action relating to disciplinary action by a state licensing board. However, to the extent S.C. Code Ann. § 15-77-300 allows attorneys fees to be awarded to Defendants, Plaintiff has, at all times, acted with substantial justification in enforcing a statutory mandate that has not been invalidated by a court of competent jurisdiction, and an award of attorney's fees would be unjust under the circumstances.

FOURTH AFFIRMATIVE DEFENSE

Defendants' counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiff and therefore must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully set forth its Reply to the Counterclaim of the Defendants, Plaintiff prays that this Court issue an Order dismissing same, and the relief sought by the Plaintiff in its Complaint be granted.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

By: s/ Shawn D. Eubanks
Shawn. D. Eubanks (S.C. Bar No. 78370)
William J. Condon, Jr. (S.C. Bar No. 72632)

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Attorneys for Board of Financial Institutions

December 23, 2020
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Dec 23 11:25 AM - GEORGETOWN - COMMON PLEAS - CASE#2020CP220882

ELECTRONICALLY FILED - 2022 Aug 22 3:26 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	BEFORE THE MASTER IN EQUITY OF GEORGETOWN COUNTY
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: JAMES D. MYRICK, ESQ., ATTORNEY FOR DEFENDANTS CDM CORPORATION, INC., AND GUARDIAN FIDUCIARY SERVICES, LLC:

YOU WILL PLEASE TAKE NOTICE that Plaintiff South Carolina Board of Financial Institutions ("Plaintiff"), by and through its undersigned counsel, will move before the Court on the 10th day following service hereof, or at such other time as is convenient for the Court, for an Order granting summary judgment of this matter pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as there is no genuine issue of material fact, and that the Plaintiff is entitled to judgment as a matter of law regarding its claims, as well as the Defendants' counterclaim. The grounds for this motion are:

1. Plaintiff is entitled to an Order declaring that Defendants have unlawfully conducted and continue, as of the date of the filing of this motion, to unlawfully conduct a trust business and hold themselves out to the public as offering trust business services, without having applied in writing to the Board of Financial Institutions, or receiving written approval therefrom, as required by S.C. Code Ann. § 34-21-10.

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2. Plaintiff is entitled to an Order of Permanent Injunction, ordering Defendants' prompt and orderly withdrawal from their fiduciary roles, and prohibiting any such further trust business or holding out to the public as providing such services, unless and until such time as Defendants receive approval required by S.C. Code Ann. § 34-21-10.
3. Plaintiff is entitled to an Order dismissing Defendants' counterclaim, as Defendants' operations constitute unlawful trust business.

This motion, along with the attached affidavits, and the supporting Memorandum of Law to be filed and incorporated herewith, is based upon the pleadings, discovery materials, including but not limited to Defendants' responses to Plaintiff's Requests to Admit, and all applicable statutory authority and case law.

Respectfully submitted,

By: s/ Shawn D. Eubanks
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Attorneys for Board of Financial Institutions

August 22, 2022
Columbia, South Carolina

AFFIDAVIT OF DIANNE SHRADER

ELECTRONICALLY FILED - 2022 Aug 22 3:26 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **AFFIDAVIT OF DIANNE SHRADER**

1. My name is Dianne Shrader. I am a resident of Horry County, South Carolina, and I am over the age of eighteen.
2. I make this sworn statement willingly and voluntarily, being of sound mind to testify.
3. I am aware of the existence of CDM Corporation, and Guardian Fiduciary Services, LLC, and I am generally familiar with the fiduciary services that these entities provide, namely that of trustee, conservator, guardian, personal representative of an estate, and healthcare attorney-in-fact.
4. I believe that these fiduciary services require the utmost care, expertise, training, and record-keeping, particularly because they involve possession and control of a vulnerable person's life, money, and property.
5. I believe that any entities conducting these fiduciary activities in South Carolina should be closely regulated by the Board of Financial Institutions.
6. Additionally, I am personally aware that CDM Corporation is serving as a trustee because I am the beneficiary of a trust for which CDM Corporation currently, as of the date of this affidavit, serves as trustee.

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7. I believe, based on my personal experience and knowledge of CDM Corporation, and Guardian Fiduciary Services, LLC, that any entity providing the services listed in Paragraph 3 without oversight is likely to pose a greater threat of harm to vulnerable people than an entity who was regulated and subject to government oversight.

8. I am informed that CDM Corporation, and Guardian Fiduciary Services, LLC, may have been and/or continue to be conducting trust business and providing these fiduciary services listed in Paragraph 3, in violation of South Carolina law and in contravention to the demands of the Board of Financial Institutions.

9. If the Board of Financial Institutions were to voluntarily allow an entity to conduct any of these fiduciary services (listed in Paragraph 3) in violation of the law, I would have no confidence in the Board or Agency as a regulator of these services.

10. Similarly, if the Board of Financial Institutions was denied the ability to prohibit or enjoin an entity from conducting these fiduciary services (listed in Paragraph 3) in violation of the law, I would have little or no respect for the Board's or Agency's authority to enforce the law.

Dianne Shrader, Affiant

Sworn to and subscribed before me this
22 day of April 2021.

Kristin B. Blanton
Notary Public for the State of South Carolina

My commission expires: 11-02-2030

Kristin B. Blanton
Notary Public, State of South Carolina
My Commission Expires 11/02/2030

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AFFIDAVIT OF JAMISON HINDS

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **AFFIDAVIT OF JAMISON HINDS**

1. My name is Jamison Hinds. I am a resident of Greenville County, South Carolina, and I am over the age of eighteen.
2. I serve as General Counsel for Colonial Trust Company, which is a South Carolina state-chartered trust company operating under the approval and regulation of the South Carolina Board of Financial Institutions ("BOFI"), which is composed of both a state agency ("Agency") and its supervisory board ("Board'). I have been a member of the Bar since 2000. I have served on the South Carolina Board of Accountancy at LLR.
3. I make this sworn statement willingly and voluntarily, being of sound mind to testify.
4. I am aware of the existence of CDM Corporation, and Guardian Fiduciary Services, LLC, and I am generally familiar with the fiduciary services that these entities provide, namely that of trustee, conservator, guardian, personal representative of an estate, and healthcare attorney-in-fact having practiced in the Probate Court.
5. I believe that these fiduciary services require the utmost care, expertise, training, and record-keeping, and that any entities conducting these fiduciary activities in South Carolina should be closely regulated by BOFI.

6. I believe that any entity providing these services without oversight by a government regulator is likely to pose a greater threat of harm to vulnerable people than an entity who was regulated and subject to government oversight.
7. I am informed that CDM Corporation, and Guardian Fiduciary Services, LLC, may have been and/or continue to be conducting trust business and providing these fiduciary services in violation of South Carolina law and in contravention to the demands of BOFI.
8. If BOFI were to allow an entity to conduct these fiduciary services in violation of the law, I would have no confidence in the Board or Agency as a regulator of these services.
9. Similarly, if BOFI was denied the ability to prohibit or enjoin an entity from conducting these fiduciary services in violation of the law, I would have little or no respect for the Board or Agency authority to enforce the law.
10. Furthermore, as a representative of Colonial Trust Company, a South Carolina state-chartered trust company, I would object to the existence of an entity competing with Colonial Trust Company which is not required to undergo the same rigorous oversight, examination and regulatory requirements established by law and by BOFI.

Jamison W. Hinds, Affiant

Sworn to and subscribed before me this
14th day of April 2021.

Karen H. Longhurst
Notary Public for the State of South Carolina

My commission expires: 09/19/2021

KAREN H. LONGHURST NOTARY PUBLIC SOUTH CAROLINA

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AFFIDAVIT OF RICHARDS H. GREEN, FORMER COMMISSIONER OF BANKING

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **AFFIDAVIT OF RICHARDS H. GREEN, COMMISSIONER OF BANKING**

1. My name is Richards H. Green, and I have served as the Commissioner of Banking for the Board of Financial Institutions since February 2019. Prior to that appointment, I was employed with the Board of Financial Institution in various roles since April 1999.

2. In my role as the Commissioner of Banking, I serve as the Agency Head for the Banking Division of the Board of Financial Institutions ("Agency"), which is an agency of the State of South Carolina.

3. As Commissioner of Banking, I also serve at the direction of the Board of Financial Institutions ("Board") which is the Agency's governing body, with proper direction from and consultation with the Board, to carry out the regulation, examination, and enforcement of companies conducting trust business in South Carolina, as well as several other types of institutions.

4. Trust business oversight and examination is rigorous. In the course of a regular trust company examination, the Agency utilizes the Uniform Interagency Trust Rating System in order to assess the following factors of trust business safety and soundness:

   a. Capability of management;

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b. Adequacy of operations and internal controls in relation to the volume and character of business conducted;

c. Earnings and capital adequacy;

d. Compliance with laws, accepted standards of fiduciary conduct, governing instruments and directives;

e. Asset management (including cash) based on the needs and objectives of each account;

5. In addition to the examination conducted by the Agency, trust companies are required to undergo an annual audit.

6. During my tenure as Commissioner of Banking, and my prior years of employment with the Agency, the Board and Agency have consistently interpreted the meaning of trust company operations to include serving as trustee, guardian, conservator, personal representative of an estate, and other fiduciary capacities.

7. For example, on April 28, 2020, the Board executed a Consent Order regarding a company called J. Earle Financial which was conducting trust business, finding that serving as a trustee and a personal representative of an estate, without prior approval from the board, violated the law. A true and accurate copy of this Consent Order is attached as EXHIBIT 1 (BOFI Doc. Nos. 0608-0613).

8. On June 29, 2020, I received a call from an attorney who was concerned that Guardian Fiduciary Services, LLC, and CDM Corporation ("Defendants") appeared to be conducting trust business without the prior written approval of the Board, as required by S.C. Code Ann. § 34-21-10.

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9. Upon further investigation by my office, it appeared that Defendants were unlawfully conducting trust business without the prior written approval of the Board, and continue to do so, as of the date of this affidavit.

10. Among other considerations, I observed that Defendants' website advertised the following services: "Trusteeship," "Power of Attorney," "Personal Representative," "Guardianship" (including a representation that Defendants "are a certified professional guardian agency"), and "Conservator."

11. On July 2, 2020, I issued a letter to Defendants, informing Defendants of the Agency's belief that they were conducting an unlawful trust business, and requesting additional information. A true and accurate copy of this letter is attached as EXHIBIT 2 (BOFI Doc. Nos. 0378-0379).

12. On August 24, 2020, I issued a follow-up letter indicating that, upon review of the incomplete materials Defendants provided to my office, it appeared that Defendants were conducting unlawful trust business. I reiterated my request for the information sought in my first letter, and invited Defendants to respond to the allegations that their fiduciary operations were unlawful. A true and accurate copy of this letter is attached as EXHIBIT 3 (BOFI Doc. Nos. 0066-0067).

13. On August 25, 2020, I received an e-mail from a representative of a Board-approved South Carolina trust company raising a concern that Defendants appeared to be conducting unauthorized trust business.

14. On September 25, 2020 I issued another letter to Defendants, who had as of that date still failed to provide information responsive to my July 2, 2020 letter. A true and accurate copy of this letter is attached as EXHIBIT 4 (BOFI Doc. No. 0027).

15. Following my August 24, 2020 letter, I provided Defendants with several extensions of time to respond; however, Defendants still failed to provide the basic information requested.

16. On October 7, 2020, in a duly called meeting of the Board, the Board voted to authorized me to make one final attempt to obtain Defendants' compliance with the law before taking immediate legal action to enjoin the unapproved trust company operations of Defendants.

17. On October 7, 2020, I issued a letter informing Defendants that if they did not cease the unlawful trust company operations, I was authorized to take legal action. A true and accurate copy of this letter is attached as EXHIBIT 5 (BOFI Doc. Nos. 0019-0021).

18. I believe that, if Defendants are allowed to continue to operate as an unauthorized trust company, above and against the Board's and Agency's objections, this continued and blatant violation of the law will irreparably harm and undermine the Board's and Agency's authority as a regulator of trust business, and will result in the irreparable erosion of public confidence in the Board's and Agency's ability to fulfill its statutory duties.

Richards H. Green, Affiant

Sworn to and subscribed before me this
14TH day of May 2021.

Notary Public for the State of South Carolina

My commission expires: 6-20-2028

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EXHIBIT 1

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original

D OF FINANCIAL INSTITUTIONS

IN THE M	)	
	)	
F. Jordan Earle and	)	CONSENT ORDER
J. Earle Financial, LLC,	)	
	)	
Respondents.	)	
	)	

I. PRELIMINARY STATEMENT

This Consent Order is entered into between the Commissioner of Banking (the "Commissioner") of the State Board of Financial Institutions (the "Board") and F. Jordan Earle and J. Earle Financial, LLC (together, the "Respondents.") in order to resolve the Commissioner's investigation into whether J. Earle Financial, LLC has conducted trust business in South Carolina without first filing a written application with and receiving written approval from the Board pursuant to S.C. Code Ann. § 34-21-10.

The Parties expressly consent to the contents of this Consent Order. Respondents elect to permanently waive any right to a hearing and appeal under Title 34 of the South Carolina Code of Laws or under the South Carolina Administrative Procedures Act in Chapter 23 of Title 1 of the South Carolina Code of Laws with respect to this Consent Order.

II. JURISDICTION

1. The Board has jurisdiction over this matter pursuant to S.C. Code Ann. § 34-21-10 et. seq.
2. The Board has delegated to the Commissioner the authority to enter into this Consent Order.

III. FINDINGS OF FACT

3. J. Earle Financial, LLC was organized as a limited liability company in South Carolina in 2017.
4. Its sole member is F. Jordan Earle.
5. J. Earle Financial, LLC has not submitted any application to and has not received any approval from the Board to conduct a trust business in South Carolina.

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6. In March, 2018, The Greenville News reported that J. Earle Financial, LLC had opened and that it provides administrative services to trusts, that it serves as a fiduciary to administer assets in conservatorships and estates, and that it can serve as the managing agent to administer trusts.
7. The website and certain printed materials of J. Earle Financial, LLC make similar representations about its services as stated in The Greenville News. Additionally, the website states that the company's sole member has over 25 years of trust experience and is a Certified Trust and Financial Advisor and that J. Earle Financial, LLC's "function is being the managing agent for the trustees." Further, one webpage under the "Services" tab is titled "Fiduciary/Managing Agent/Daily Money Manager Services." On that webpage, J. Earle Financial, LLC states, "[W]e coordinate and administer the myriad of financial and operational affairs for individuals, families, and self-directed personal trusts and estates," including serving as "trustee [and] personal representative (Appointed as: F. Jordan Earle, J. Earle Financial LLC Administrative Agent)" and performing "'managing agent' duties."

Trust 1

8. In May, 2019, the Probate Court of Greenville County approved the amendment of Trust 1 to allow "a single member limited liability company qualified to do business in the state of South Carolina" to become a successor trustee.
9. The Probate Court also approved the appointment of F. Jordan Earle as sole member of J. Earle Financial, LLC as the successor trustee of Trust 1, vested F. Jordan Earle as sole member of J. Earle Financial, LLC with the power and authority to administer the trust, and stated that F. Jordan Earle as sole member of J. Earle Financial, LLC was entitled to reasonable compensation for its professional services rendered.
10. The Probate Court's order also recognized that the predecessor trustee opposed the appointment of F. Jordan Earle as sole member of J. Earle Financial, LLC as successor trustee and requested that F. Jordan Earle, individually, serve as trustee.

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Trust 2

11. The Certificate of Trust for Trust 2, which was filed in September, 2019 with the Greenville County Register of Deeds, stated that the co-trustees included two individuals and "F. Jordan Earle, as sole Member of J. Earle Financial, LLC, a South Carolina limited liability company." The Certificate of Trust then titled the assets of the trust in the name of those two individuals and "F. Jordan Earle, as sole Member of J. Earle Financial, LLC as Co-Trustees." Mr. Earle signed this Certificate of Trust for J. Earle Financial, LLC, a co-trustee, as its sole member.
12. In a Limited Warranty Deed filed in September, 2019, the co-trustees, including F. Jordan Earle as sole member of J. Earle Financial, LLC, of Trust 2 granted all of their right, title, and interest to certain real estate to F. Jordan Earle as sole member of J. Earle Financial, LLC, as trustee for Trust 1. Mr. Earle signed this Limited Warranty Deed for J. Earle Financial, LLC, a co-trustee, as its sole member.

Trust 3

13. Mr. Earle provided a copy of Trust 3, which stated, "The Trustee of this Trust shall be J. Earle Financial, LLC." This trust document was filed in the Spartanburg County Court of Common Pleas in June, 2019.
14. Mr. Earle also provided two documents each titled "Release and Receipt" and dated July, 2019 in which a grantee/successor trustee/authorized agent stated that he or she received the remaining income and principal from the trust and "releases J. Earle Financial LLC, Trustee from its fiduciary administration of said funds."

Trust 4

15. Individual 1 executed her will in April, 1965. In Item 7 of the will, Individual 1 gave the rest, residue, and remainder of the estate to the named trustees to distribute the assets as provided primarily to surviving children or the issue of any deceased children. The trust resulting from Individual 1's will is referenced herein as Trust 4.

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16. In a document dated July, 2019, an individual co-trustee of Trust 4 informed the other co-trustees that he resigned his appointment as co-trustee.
17. In a document dated August, 2019, Mr. Earle informed the other co-trustees that "I, F. Jordan Earle, J. Earle Financial LLC . . . acknowledge appointment as co-trustee of [Trust 4], and as successor trustee."
18. In a document dated August, 2019, Mr. Earle informed the Clerk of Court of Polk County, North Carolina, that "I, F. Jordan Earle, J. Earle Financial LLC . . . accept appointment as trust[ee] of [Trust 4] and will undertake faithfully to perform the duties of trustee . . . ."

Trust 5

19. Individual 1 executed a trust document in September, 1961. In this trust document, Individual 1, as the Grantor, named three co-trustees and conveyed certain property to the trustees for the benefit of Individual 2, her son. This trust is referenced as Trust 5.
20. In a document dated July, 2019, an individual co-trustee of Trust 5 informed the other co-trustees that he resigned his appointment as co-trustee.
21. In a document dated August, 2019, Mr. Earle informed the other co-trustees that "I, F. Jordan Earle, J. Earle Financial LLC . . . acknowledge my appointment as co-trustee of [Trust 5] and as successor trustee."

Estate 1

22. In December, 2019, Mr. Earle submitted and signed a petition to the Charleston County Probate Court requesting that "F. Jordan Earle, J. Earle Financial, LLC Administrative Agent" serve as personal representative to the estate of Individual 3, which is referenced herein as Estate 1.
23. In December, 2019, the Charleston County Probate Judge issued a Certificate of Appointment to "F. Jordan Earle, J. Earle Financial LLC Administrative Agent" as Personal Representative for Estate 1.
24 Regarding Estate 1, Mr. Earle also submitted and signed for "F. Jordan Earle, J. Earle Financial LLC Administrative Agent" a document titled "Qualification and Statement of Acceptance" to

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the Charleston County Probate Court stating, "I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate."

Fees

25. Mr. Earle stated that the fees paid by the above trusts and/or estates were deposited into a bank account in the name of J. Earle Financial, LLC.

IV. CONCLUSIONS OF LAW

26. Through its website and printed materials, J. Earle Financial, LLC has held itself out to the public as providing trust business in South Carolina.
27. By being named and serving as trustee or personal representative in the above described matters, J. Earle Financial, LLC has conducted trust business in South Carolina.
28. J. Earle Financial, LLC has accepted fees for performing trust business in South Carolina.
29. J. Earle Financial, LLC has violated S.C. Code Ann. § 34-21-10 by performing trust business in South Carolina without applying to and receiving written approval from the Board.

V. ORDER

It is hereby ordered that:

A. J. Earle Financial, LLC shall immediately cease and desist from accepting any appointments that would result in J. Earle Financial, LLC performing any trust business in South Carolina.

B. J. Earle Financial, LLC shall immediately cease and desist from accepting any payment for the performance of trust business in South Carolina.

C. For each trust and estate described above in Part III of this Consent Order, Respondents shall:

   i. For all open trusts or estates, take appropriate action to legally remove J. Earle Financial, LLC as trustee or personal representative and provide appropriate

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documentation to the Commissioner substantiating the changes. F. Jordan Earle may be appointed as trustee or personal representative individually.

ii. For any closed trust or estate, provide appropriate documentation to the Commissioner substantiating that the trust or estate is closed.

iii. Ensure that no funds of a trust or estate are used to comply with this Consent Order or to obtain the substantiating documentation.

D. J. Earle Financial, LLC shall modify its website and printed marketing materials to exclude all references that may state or infer that J. Earle Financial, LLC performs any trust business in South Carolina.

E. Respondents shall complete these tasks and provide the substantiating documentation to the Commissioner within sixty days of the date of this Consent Order.

It is so ordered this 28th day of April, 2020.

By: _____
Richards H. Green
Commissioner of Banking
State Board of Financial Institutions

Agreed to by:

By: _____
J. Earle Financial, LLC
F. Jordan Earle, its sole member

By: _____
F. Jordan Earle, individually

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EXHIBIT 2

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The South Carolina
State Board of Financial Institutions
Banking Division
1205 Pendleton Street, Suite 305
Columbia, SC 29201
Phone: (803) 734-2001
Fax: (803) 734-2013
www.banking.sc.gov

Richards H. Green
Commissioner of Banking

July 2, 2020

Stephen P. Mantell
President and Registered Agent
CDM Corporation
10698 Ocean Highway, Suite 100
Pawleys Island, SC 29585

Stephen P Mantell
President and Registered Agent
Guardian Fiduciary Services LLC
10698 Ocean Highway, Suite 100
Pawleys Island, SC 29585

Dear Mr. Mantell:

The State Board of Financial Institutions (the "Board") regulates companies that conduct trust business in South Carolina. State law prohibits any corporation, partnership, or other person from conducting trust business in South Carolina without first making a written application to the Board and receiving written approval from the Board. State law however exempts "a natural person or a national banking association having its principal place of business in this State" from this Board-approval requirement. We are contacting you because it appears that CDM Corporation ("CDM") and Guardian Fiduciary Services, LLC ("Guardian"), which are neither a natural person nor a national banking association, may be conducting trust business in South Carolina without applying for and receiving approval to do so from the Board.

Based on our inspection of two trust documents, Guardian's website, and other information, we understand that CDM is currently serving as a trustee for the Patricia A. Fearson Revocable Trust in South Carolina, that both CDM and Guardian have served as a Personal Representative to an estate in South Carolina, and that Guardian holds itself out as conducting a trust business in South Carolina on its website. Further, based on two Internet advertising websites, CDM may be holding itself out to the public as conducting trust business in South Carolina.

The Patricia A. Fearson Revocable Trust was first established on September 27, 2018. There have been two restatements of the trust. The first restatement of the trust was dated June 25, 2019, and the second restatement of the trust was dated February 13, 2020. Both restatements of the trust designate CDM as the trustee and state that CDM is entitled to compensation for the services that it renders to the trust. Further, the signature block of each restatement identifies CDM as the trustee and includes the signature of Stephen P. Mantell as President of CDM.

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A webpage for the Columbia Star shows that on November 1, 2013, the Columbia Star published numerous notices to creditors of estates, including one related to CDM and one related to Guardian. One of these two respective notices named CDM as the personal representative of an estate, while the other notice named Guardian as the personal representative of another estate.

On its website, Guardian lists its services as international services, trustee, guardianship, conservator, power of attorney, personal representative, receivership, care management, and hospital discharge support. Further, on the Trust Management page of its website, Guardian states that it can serve its clients better than "larger banks" and states, "Guardian Fiduciary Services provides a wide range of trust management options from simple banking management to property management."

A Yellow Pages website (www.yellowpages.com) lists CDM in the category of "Trust Companies," while a Super Pages website (www.superpages.com) includes CDM in the category of "Trust Companies and Services."

Finally, both CDM and Guardian have addresses in Pawleys Island, South Carolina and a South Carolina-based phone number and otherwise appear to conduct business in South Carolina.

Based on the above, the Board needs to determine whether CDM, Guardian, and other related entities have conducted trust business in South Carolina without applying for and obtaining written approval by the Board. Accordingly, within fifteen days of the date of this letter, we request that you provide us with the following:

1. A written response to our concern that CDM and Guardian has or is conducting trust business in South Carolina without Board approval, including the facts and reasoning of why each company has not sought such approval from the Board. Please also provide any supporting materials.
2. A written list of other trusts, estates, and other persons for whom CDM, Guardian, or any related company provides or has provided trust business in South Carolina since January 1, 2016.

We look forward to your response and will inform you of the next steps after we review your response. You may contact Board Counsel Bill Condon at (803) 734-3361 or bill.condon@sto.sc.gov if you have questions.

Richards H. Green
Commissioner of Banking

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EXHIBIT 3

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The South Carolina
State Board of Financial Institutions
Banking Division
1205 Pendleton Street, Suite 305
Columbia, SC 29201
Phone: (803) 734-2001
Fax: (803) 734-2013
www.banking.sc.gov

Richards H. Green
Commissioner of Banking

August 24, 2020

Stephen P. Mantell
President and Registered Agent
CDM Corporation
Guardian Fiduciary Services, LLC
10698 Ocean Highway, Suite 100
Pawleys Island, SC 29585

Dear Mr. Mantell:

The State Board of Financial Institutions (the "Board") is in receipt of your letter dated July 28, 2020, in which you, on behalf of your companies, CDM Corporation ("CDM") and Guardian Fiduciary Services, LLC ("Guardian"), (collectively "Companies") respond to allegations that you are operating a trust business without Board approval.

As an initial matter, your response to our inquiry failed to provide a complete list of all trusts, estates, and other persons for whom CDM, Guardian, or any related company provides or has provided trust business in South Carolina since January 1, 2016. Accordingly, within 15 days of this letter, you are directed to provide this information, including a description of each account and the capacity (e.g., trustee, executor, etc.) in which each company serves, along with a copy of the legal instrument or court document which names the company in such capacity.

As for the information you provided, you state in your response that you do "accept fiduciary appointments pursuant to court direction and/or personal trusts within estate planning." You further indicate that you "utilize a corporate structure to allow for continuity in the event something happens to me." Additionally, in a telephone conversation on July 28, 2020, you estimated that you have twenty conservatorship accounts, five or six power-of-attorney accounts, five or ten estates, and three or four trusts.

S.C. Code Ann. § 34-21-10 provides that "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board… Provided, further, that nothing contained in this section shall prevent a natural person… from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." This prohibition is not limited to the act of "investment management" or "investment firms" as you have indicated in your letter.

Based on your response, along with a review of two trust documents, Guardian's website, and other information, we believe that CDM and Guardian are unlawfully conducting a trust business in South Carolina without receiving the required approval from the Board.

We look forward to your response and would like to schedule a discussion once we've reviewed your response. You may contact Board Counsel Shawn Eubanks at (803) 734-2623 or shawn.eubanks@sto.sc.gov if you have questions. Or you may contact me directly at (803) 734-2001 or rick.green@banking.sc.gov.

Sincerely,

Richards H. Green
Commissioner of Banking

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EXHIBIT 4

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The South Carolina
State Board of Financial Institutions
Banking Division
1205 Pendleton Street, Suite 305
Columbia, SC 29201
Phone: (803) 734-2001
Fax: (803) 734-2013
www.banking.sc.gov

Richards H. Green
Commissioner of Banking

September 25, 2020

Stephen P. Mantell
President and Registered Agent
CDM Corporation
Guardian Fiduciary Services, LLC
10698 Ocean Highway, Suite 100
Pawleys Island, SC 29585

Dear Mr. Mantell:

I am in receipt of your e-mail dated September 24, 2020, in which you have requested additional time to prepare a response to the Board of Financial Institutions ("BOFI") addressing concerns that CDM Corporation and Guardian Fiduciary Services, LLC, are unlawfully operating a trust business without Board approval.

As you know, my initial communication to you requesting information was sent on July 2, 2020. Since that time, you have repeatedly failed to provide sufficient documentation which responds to our requests.

Based on your continued failure to respond adequately, please be advised that if you do not provide the requested information to our office prior to the close of business on Wednesday, September 30, 2020, I intend to promptly pursue action enjoining the trust operations of CDM Corporation and Guardian Fiduciary Services, LLC.

Regarding your request for a meeting, I would be happy to meet with you virtually via WebEx to discuss this matter. Please provide dates and times of your availability and I will arrange the meeting. Note, however, that our attorney will be participating in the meeting and you are free to invite your legal counsel as well.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Richards H. Green
Commissioner of Banking

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EXHIBIT 5

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The South Carolina
State Board of Financial Institutions
Banking Division
1205 Pendleton Street, Suite 305
Columbia, SC 29201
Phone: (803) 734-2001
Fax: (803) 734-2013
www.banking.sc.gov

Richards H. Green
Commissioner of Banking

October 7, 2020

VIA E-MAIL AND OVERNIGHT DELIVERY
Stephen P. Mantell
Registered Agent
CDM Corporation, Inc.
Guardian Fiduciary Services, LLC
10698 Ocean Highway, Suite 100
Pawleys Island, SC 29585

Stephen P. Mantell
President
CDM Corporation, Inc.
Guardian Fiduciary Services, LLC
11919 Plaza Drive
Murrells Inlet, SC 29576

FINAL DEMAND – LITIGATION IMMINENT

Dear Mr. Mantell,

The Banking Division of the South Carolina Board of Financial Institutions ("BOFI") has been communicating with you since July 2, 2020 about whether CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services ("Guardian") are unlawfully conducting unlicensed trust business and/or holding themselves out as offering or providing trust business services in South Carolina, in violation of state law.

In that time, I have repeatedly written to request that CDM and Guardian provide additional information regarding your trust business operations which would aid BOFI in consideration of this matter. However, as of this date, you have failed to provide a sufficient response to my requests. It is time to resolve this matter with you or through the courts if necessary.

S.C. Code Ann. 34-21-20 provides that "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to [BOFI] and receiving written approval from the Board." Trust business which requires BOFI approval includes "undertaking to act… primarily for the benefit of others in all matters connected with its undertaking and includes trustee, executor, administrator, guardian of estates, committee of estates or persons non compos mentis, and managing agent," (S.C. Code Ann. Section 34-21-210(2)) as well as serving in the capacity of "executor, administrator, committee, guardian, or trustee under a will or deed." S.C. Code Ann. 34-21-220(1).

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During our investigation, we have identified the following evidence, indicating that CDM and Guardian are unlawfully conducting unlicensed trust business and/or holding themselves out as offering or providing trust business services in South Carolina:

1. September 27, 2018 trust document appointing "CDM Corporation, Inc., by and through its representative, Stephen P. Mantell, its corporate successors or assigns ('CDM Corporation') located in Georgetown County, South Carolina as initial trustee (the 'Trustee')";

2. CDM and Guardian's joint website (https://www.gfs-cdmcorporation.com/) advertising "Trusteeship" as a service offered, and providing that CDM and Guardian "administer and safeguard the assets held in the trust";

3. CDM and Guardian's joint website (https://www.gfs-cdmcorporation.com/) advertising "Personal Representative" as a service offered, and in which CDM and Guardian state that "As Personal Representative (PR), we act in accordance with the Court-ordered process of administering a decedent's estate."

4. CDM and Guardian's joint website (https://www.gfs-cdmcorporation.com/) advertising "Guardianship" as a service offered, and providing that CDM and Guardian is "a certified professional guardian agency with two certified guardians on staff."

5. CDM and Guardian's joint website (https://www.gfs-cdmcorporation.com/) advertising "Power of Attorney" as a service offered, and in which CDM and Guardian state that "As Power of Attorney (POA), we serve in accordance with the specific instrument you have already completed for your Durable, Medical or Financial Power of Attorney needs."

6. July 28, 2020 letter from Stephen Mantell on behalf of CDM and Guardian indicating he on behalf of CDM and Guardian "accept[s] fiduciary appointments pursuant to court direction and/or personal trusts within estate planning" and "utilize[s] a corporate structure to allow for continuity in the event something happens to me."

Therefore, on Wednesday, October 7, 2020, upon my recommendation, the Board of BOFI voted to issue this letter offering CDM and Guardian a final opportunity to resolve this matter prior to litigation. Accordingly, to avoid litigation, BOFI requires CDM and Guardian to take the following actions:

1. Immediately stop conducting or holding themselves out as offering or providing any and all trust business services, except for those activities which are necessary to carry out the remaining provisions of this letter;

2. Immediately remove all references to trust business operations from all promotional materials, including, but not limited to, the CDM and Guardian website(s), signage, business cards, etc.;

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3. Within 10 calendar days of this notice, provide the Commissioner of Banking with a list of all trusts, estates, and other persons for whom CDM Corporation or Guardian Fiduciary Services provides or has provided trust business in South Carolina since January 1, 2016;

4. Within 10 calendar days of this notice, notify in writing all trust business clients of CDM and/or Guardian that these entities are not licensed to serve as trust companies in the State of South Carolina, and that those clients must remove CDM and/or Guardian as trustee, personal representative, guardian, and/or power of attorney;

5. Within 15 calendar days of this notice, provide the Commissioner of Banking with documentation sufficient to prove that all trust company clients of CDM and Guardian have been notified, as required above;

6. Within 60 calendar days of this notice, transfer all South Carolina duties, accounts, deposits, or other corpus or trust assets or materials related to services as trustee, personal representative, guardian, and/or power of attorney, from CDM and/or Guardian's control, and provide the Commissioner of Banking with written certification of completion of all such transfers, signed by all principals of CDM and Guardian under penalty of perjury.

If CDM and/or Guardian fail to do any of these things within the time permitted, I am authorized to take immediate legal action to enjoin the unlicensed trust company operations of CDM and Guardian, and seek any other available remedies.

Thank you in advance to your prompt attention to this matter. If you have questions, you may contact Board Counsel Shawn Eubanks at (803) 734-2623 or shawn.eubanks@sto.sc.gov.

Sincerely,

Richards H. Green
Commissioner of Banking

AFFIDAVIT OF RONALD GAYNOR

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH CIRCUIT
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **AFFIDAVIT OF RONALD GAYNOR**

1. My name is Ronald Gaynor. I am an attorney, and a resident of Georgetown County, South Carolina, and I am over the age of eighteen.
2. I make this sworn statement willingly and voluntarily, being of sound mind to testify.
3. I am aware of the existence of CDM Corporation, and Guardian Fiduciary Services, LLC, and I am generally familiar with the fiduciary services that these entities provide, namely that of trustee, conservator, guardian, personal representative of an estate, and healthcare attorney-in-fact.
4. I believe that these fiduciary services require the utmost care, expertise, training, and record-keeping, particularly because they involve possession and control of a vulnerable person's life, money, and property.
5. I believe that any entities conducting these fiduciary activities in South Carolina should be closely regulated by the Board of Financial Institutions.
6. I believe, based on my personal experience and knowledge of CDM Corporation, and Guardian Fiduciary Services, LLC, that any entity providing the services without oversight is

likely to pose a greater threat of harm to vulnerable people than an entity who was regulated and subject to government oversight.

7. It is my belief that CDM Corporation, and Guardian Fiduciary Services, LLC, has been and continues to be conducting trust business in violation of South Carolina law and in contravention to the demands of the Board of Financial Institutions.
8. If the Board of Financial Institutions were to voluntarily allow an entity to conduct any of these fiduciary services (listed in Paragraph 3) in violation of the law, I would have little confidence in the Board or Agency as a regulator of these services.
9. Similarly, if the Board of Financial Institutions was denied the ability to prohibit or enjoin an entity from conducting these fiduciary services (listed in Paragraph 3) in violation of the law, I would have little respect for the Board's or Agency's authority to enforce the law.

R Gaynor

Ronald Gaynor, Affiant

Sworn to and subscribed before me this
11th day of May 2021.

Kimberly Moore

Notary Public for the State of South Carolina

My commission expires: 7-28-2030

KIMBERLY MOORE
My Commission Expires
NOTARY PUBLIC
July 28, 2030
STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	BEFORE THE MASTER IN EQUITY OF GEORGETOWN COUNTY
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Before a non-exempt person conducts trust business in South Carolina, that person must seek and obtain prior approval from the eleven-member Board ("Board") of the Board of Financial Institutions ("BOFI"). CDM Corporation ("CDM"), and Guardian Fiduciary Services, LLC ("GFS") (collectively "Defendants") have engaged in trust business in South Carolina without seeking or obtaining this prior approval. Accordingly, BOFI has brought an action for declaratory judgment and permanent injunction to enjoin Defendants' unauthorized and unlawful trust business and now moves for Summary Judgment in light of Defendants' conclusive admissions and the undisputed evidence of the case.

UNDISPUTED FACTS

The Board of Financial Institutions refers to both an agency of the State of South Carolina ("Agency"), and the eleven-member regulatory board ("Board") which it serves (collectively "BOFI"). The Agency has two divisions: the Consumer Finance Division, and the Banking Division. The Banking Division, headed by the Commissioner of Banking, Kathy Bickham

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(formerly Richards H. Green), is tasked with the supervision of, among other types of financial institutions, "trust companies and fiduciary corporations." S.C. Code Ann. § 34-21-20.

CDM is a domestic corporation located in Georgetown, South Carolina, co-owned by Mr. Stephen Mantell and his wife Candida Mantell. GFS is a domestic limited liability company with Mr. Mantell as the sole member.

At all times relevant to this action Defendants have conducted trust business in South Carolina by serving as trustee, conservator, guardian, personal representative, and agent pursuant to a power of attorney, and held themselves out as offering these trust business services to the general public in this state.

On and before the date this action was instituted, Defendants' shared website advertised the services of "trusteeship," "power of attorney," "personal representative," "guardianship," and "conservator." Green Aff., ¶ 10; see also Pl. Resp. to Def. Req. to Admit, No. 8 (Att. No. 1-12). Defendants admit to this textual content of their shared website, which holds the companies out to the public as providing these trust business services.[1]

CDM admits that it holds itself out to the public as providing the services of conservator (Pl. Resp. to Def. Req. to Admit, No. 9), guardian (Id. at No. 13), personal representative of an estate (Id. at No. 17), and power of attorney (Id. at No. 21). CDM also admits that it currently serves as conservator for at least one individual (Id. at No. 11), guardian for at least one individual (Id. at No. 15), personal representative of at least one estate (Id. at No. 19), and power of attorney for at least one individual (Id. at No. 23). CDM denies having served as a trustee, but the undisputed evidence proves that is has done so. See Shrader Aff. ¶6.; see also Def. Resp. to Pl. Req. to Admit, No. 27 ("CDM Corporation is not currently serving as trustee of any trust, *or has*

[1]Defendants conclusively admit to the textual accuracy of screenshots of their shared website, www.gfs-cdmcorporation.com. See Pl. Resp. to Def. Req. to Admit, No. 8 (Att.).

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moved to install Stephen Mantell, individually, as trustee.") (emphasis added). CDM and GFS have advertised themselves as offering services as a trustee on their shared website:

> At GFS we follow as directed by your trust, we administer and safeguard the assets held in the trust. We report to the beneficiaries, file tax returns and make distributions per the instructions in the trust. We prepare court accounting's [*sic*] and take responsibility for the investable assets. We take on the responsibility for all the trust assets, including investable assets and real property.

Pl. Resp. to Def. Req. to Admit, No. 8 (Att. No. 1). This language has since been removed from the website.

Likewise, GFS, admits that it holds itself out as providing the services of conservator (Def. Resp. to Pl. Req. to Admit, No. 10), guardian (Id. at No. 14), personal representative of an estate (Id. at No. 17), and power of attorney (Id. at No. 22). GFS also admits that it currently serves as guardian for at least one individual (Id. at No. 16).

Defendants have provided a list of their clients and the fiduciary roles in which Defendants' serve for each individual. That list, with names redacted, is attached hereto as Exhibit A.

Despite conducting this extensive trust business, Defendants admit that they have never made a written application to the Board to conduct a trust business in South Carolina, nor have they received written permission from the Board to conduct a trust business in South Carolina. Def. Resp. to Pl. Req. to Admit, Nos. 3-6.

ARGUMENT

I. DEFENDANTS ADMIT CONCLUSIVELY THAT THEY HAVE CONDUCTED AND CONTINUE TO CONDUCT A TRUST BUSINESS, WITHOUT OBTAINING PRIOR WRITTEN APPROVAL BY THE BOARD, IN VIOLATION OF THE LAW.

The undisputed evidence in this case proves that Defendants have conducted and continue to conduct a trust business in South Carolina without having obtained prior written approval by

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the Board, in violation of S.C. Code Ann. § 34-21-10, or submitting to the supervision of, and rules promulgated by, the Board, as contemplated by S.C. Code Ann. § 34-21-20.

As the facts are not in dispute, this case is primarily a matter of proper statutory construction and application. A statute must receive a practical and reasonable interpretation consistent with the "design" of the legislature. Smith v. S.C. Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation." Santee Cooper Resort v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989). "The terms must be construed in context and their meaning determined by looking at the other terms used in the statute." Hinton v. S.C. Dep't of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). "[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." S.C. Coastal Council v. S.C. Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

Every state in the United States prohibits unauthorized trust business, and every state defines trust business to include serving as trustee, guardian, conservator, personal representative, and other fiduciary roles.[2] South Carolina law is no different, and provides as follows:

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the [Board] and receiving written approval from the Board…. Provided, further, that nothing contained in this section shall prevent a natural person… from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

S.C. Code Ann. § 34-21-10.

[2] For an exhaustive listing of the trust business laws in each state, see Exhibit D – "Trust Business Definition and Approval Requirements in Every State." These laws are discussed more fully in Section II.C of this Memorandum.

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This statute prohibits all entities (other than natural persons and national banks) from conducting "trust business" unless they have first obtained prior approval from BOFI's Board. The term "trust business" is not separately defined in statute; however, based on the plain language of the statute, "trust business" refers to a broad range of fiduciary activities, including trustee, personal representative, guardian, conservator, and other roles, such as agent pursuant to a power of attorney. When "construed in context… by looking at the other terms used in the statute," (Hinton, 357 S.C. at 333), this conclusion is reinforced by S.C. Code § 34-21-210, addressing trust business management of common trust funds: "the term 'fiduciary' means a trust institution undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking[3] and includes trustee, executor, administrator,[4] guardian of estates,[5] committee of estates of persons non compos mentis,[6] and managing agent." Based on these statutes, it is clear that serving as trustee, conservator, guardian, personal representative, or agent, constitutes "conducting a trust business" and a non-exempt person must obtain Board approval prior to doing so.

The regulated powers of trust companies serving in these fiduciary roles are also contemplated and reinforced throughout South Carolina law. To wit,

> •S.C. Code Ann. § 34-15-10 establishes that a trust company must have "at least two hundred fifty thousand dollars total unimpaired capital" to be appointed as a **trustee**, a **personal representative** of an estate, and a "**guardian** of the estate;"
>
> •S.C. Code Ann. § 35-5-20 sets forth provisions whereby a trust company, "when acting as **agent, custodian or attorney-in-fact**," must register securities;

[3] The phrase "act primarily for the benefit of another" is commonly used to define the activities and duties of an agent. See Restatement (First) of Agency § 13 (1933) ("The agreement to act on behalf of the principal causes the agent to be a fiduciary, that is, a person having a duty, created by his undertaking, *to act primarily for the benefit of another in matters connected with his undertaking*.")

[4] Per the South Carolina Probate Code, the terms "executor, [and] administrator…" have the same meaning as the role of "personal representative." S.C. Code Ann. § 62-1-201(33).

[5] The term "guardian of estates" refers to the role of a guardian in current Probate Code terminology.

[6] The term "committee of estates of persons non compos mentis" refers to a conservator in the current Probate Code.

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•S.C. Code Ann. § 35-5-40 indicates the legislature's understanding that a trust company's fiduciary relationship may be established by "**will, judgment, decree,** or **other instrument**" rather than by a trust, alone;

•S.C. Code Ann. § 62-3-603(A)(3) provides that a trust company acting as the **personal representative** of an estate is not required to file a bond with the Probate Court, unless the will expressly requires a bond;

•S.C. Code Ann. § 62-3-203(e)(3) prohibits a national bank or out-of-state trust company from serving as **personal representative** of an estate in South Carolina, demonstrating the legislature's understanding that State law permits approved State-chartered banks and trust companies to serve in such capacity;

•S.C. Code Ann. § 62-5-431(D) provides that banks and trust companies are exempt from certain limitations when serving as **conservator** for purposes of Veterans' Affairs benefits.

•S.C. Code Ann. § 62-7-933(C)(3)(c) sets forth the "Prudent Investor Rule," which governs investment and management decisions of **"any fiduciary holding securities in its fiduciary capacity**," provides that "A bank, trust company, or private banker so depositing securities pursuant to this section shall be subject to such regulations as in the case of state-chartered institutions, the Board of Financial Institutions..."

•S.C. Code Ann. § 62-8-208 contemplates "language in a **power of attorney** granting general authority with respect to banks and other financial institutions" conducting trust business.

•S.C. Code Ann. § 21-29-90 authorizes any bank "designate an affiliated trust company as its agent for the performance of all acts, obligations, and responsibilities of the bank with respect to **any fiduciary or other services generally rendered by bank trust departments.**"

(emphasis added).

The roles of trustee, conservator, guardian, personal representative, and agent pursuant to a power of attorney are all fiduciary roles in which significant trust is placed in a person or entity "act… for the benefit of another in all matters connected with its undertaking." S.C. Code Ann. § 34-21-210. The Probate Code (Title 62), describes each of these roles, and the provisions of Title 62 coincide with the provisions of the Banking Code (Title 34), without contradiction.[7]

[7] Per the Attorney General, "Nowhere in Chapter 21 of Title 34, the chapter entitled 'Banks and Corporations Doing Trust Business' is there any suggestion, annotation or reference that indicates that either the Legislature or the Code Commissioner thought that the Trust Statute could not stand side by side the Probate Code." 1995 WL 803721, at *4 (S.C.A.G. Aug. 2, 1995).

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A. Trustee

A trustee is a fiduciary with broad power over the assets of a trust. See, e.g., S.C. Code Ann. §§ 62-7-801, 62-7-802, 62-7-815, 62-7-816. It is a trustee's duty to "to take control of and protect the trust property" (§ 62-7-809), and to administer the trust "in good faith, in accordance with its terms and purposes" (§ 62-7-801) "solely in the interests of the beneficiaries" (§ 62-7-802(a)), "as a prudent person would" (§ 62-7-804). A trustee may acquire or sell property (§ 62-7-816(2)), borrow money (§ 62-7-816(5)), and pay expenses of the trust (§ 62-7-816(15), and generally exercise "all powers over trust property which an unmarried competent owner has over individually owned property," and must do so "subject to the fiduciary duties prescribed by this part." S.C. Code Ann. §§ 62-7-815(a)(2)(A), (B).

B. Conservator

Like a trustee, a conservator is a fiduciary and has broad power over another's assets. In fact, the term "trustee" is used multiple times in the Probate Code when describing a conservator. "Conservator" is defined as "a person who is appointed by a court to manage the estate of a protected person." S.C. Code Ann. § 62-1-201(6); see also S.C. Code Ann. § 62-5-101(3). A conservator shall "act as a fiduciary and shall observe the standards of care applicable to trustees" (§62-5-414(A)) and shall act "in the best interest of the protected person" (§ 62-5-422(A)). A conservator also has broad power over the protected person's assets including, but not limited to, the power to "invest and reinvest funds of the estate as would a trustee" (§ 62-6-422(A)(1)) collect, hold, and retain assets of the estate (§ 62-5-422(A)(2)); buy, sell, and abandon estate assets (§ 62-5-422(B)(3)); deposit estate funds into a bank account (§ 62-5-422(A)(4)); borrow money (§ 62-5-422(A)(11); and pay expenses of the estate (§ 62-5-422(A)(13). In fact, "The appointment of a

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conservator vests in him title as trustee to all property of the protected person." S.C. Code Ann. § 62-5-417.

C. Guardian

Like a trustee, a guardian is a fiduciary and has broad power over another's assets. "Guardian" is defined as a person appointed by the court who "shall make decisions regarding the ward's health, education, maintenance, and support." S.C. Code Ann. § 62-5-101(9). Guardians "serve as fiduciaries subject to fiduciary duties." S.C. Code Ann. § 62-5-103(B). A guardian provides "for the care, comfort, and maintenance of the ward," and provides consent for medical and professional care. S.C. Code Ann. § 62-5-309. In the absence of a conservator, a guardian is responsible for "receiving money and tangible property deliverable to the ward and applying the money and property for support, care, and education of the ward." S.C. Code Ann. § 62-5-309(A)(6)(b). And even if a conservator has been appointed, a guardian pays current expenses for support, care, and education from the ward's assets before paying any excess funds to the conservator. S.C. Code Ann. § 62-5-309(A)(8)(a).

D. Personal Representative

A personal representative is a fiduciary charged with a duty to "settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will…" S.C. Code Ann. § 62-3-703(a). A personal representative may also be appointed when a decedent dies intestate. See S.C. Code Ann. § 62-3-705. Like a trustee, a personal representative is a fiduciary with broad power over the property of another and must act "for the best interest of the successors to the estate." S.C. Code Ann. § 62-3-703(a). The personal representative "shall observe various duties, including the standards of care described by Section 62-7-804 [setting forth the duties of a trustee]." Id. In fact, a personal representative is said to hold estate property in trust: "a personal

representative has the same power over the title to property of the estate that an absolute owner would have, *in trust however*, for the benefit of the creditors and others interested in the estate." S.C. Code Ann. § 62-3-711(a) (emphasis added).

E. Agent Pursuant to a Power of Attorney

An agent who is "granted authority to act for a principal under a power of attorney… is a fiduciary." S.C. Code Ann. § 62-8-102. Like a trustee, an agent has broad power over another's assets, and may "do any lawful act with respect to the subject and all property related to the subject" (§ 62-8-203(10)), including demanding "money or another thing of value to which the principal is… entitled, and conserve, invest, disburse, or use anything so received," (§ 62-8-203(a)), and "contract[ing] in any manner with any person" (§ 62-8-203(2)). An agent must act "in the principal's best interest" (§ 62-8-114(a)(1)) and "act loyally for the principal's benefit" (§ 62-8-114(b)(1)).

From the perspective of the fiduciary in each role, there is no relevant legal distinction between the duties of trustee, conservator, guardian, personal representative, or agent pursuant to a power of attorney. A fiduciary is defined as "[s]omeone who is required to act for the benefit of another person" and "who must exercise a high standard of care in managing another's money or property." Black's Law Dictionary (11th ed, 2019) (West 2019). Here, each of the applicable fiduciaries have a statutory duty to act in the best interest of another person. Each fiduciary holds significant power over the property (and the person) of another individual or group of individuals, many of whom are often quite vulnerable.

"Undoubtedly, South Carolina has a legitimate interest in assuring that corporate fiduciaries serve the public faithfully. Laws prescribing the fiduciaries' financial resources, governing their conduct, and defining their responsibilities are appropriate means of controlling

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trust companies." American Trust Co., Inc. v. S.C. State Bd. of Bank Control, 381 F. Supp. 313, 320 (D.S.C. 1974). To that end, South Carolina law provides that organizations serving in these roles must obtain the Board's permission to do so (per S.C. Code Ann. § 34-21-10), and are to be regulated by BOFI: "All… trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by the State Board of Financial Institutions and are further subject to rules and regulations promulgated by the Board." S.C. Code Ann. § 34-21-20.

Once an entity is approved to conduct trust business, BOFI's oversight and examinations are rigorous. In the course of a regular trust company examination, BOFI utilizes the Uniform Interagency Trust Rating System in order to assess the following factors of trust business safety and soundness: capability of management; adequacy of operations and internal controls in relation to the volume and character of business conducted; earnings and capital adequacy, compliance with laws, accepted standards of fiduciary conduct, and governing instruments and directives; and asset management (including cash) based on the needs of each account. Green Aff. ¶4; see also FDIC, "Trust Examination Manual," fdic.gov/regulations/examinations/trustmanual/.

In the present case, the undisputed evidence[8] indicates that Defendants have conducted, and continue to conduct the following unauthorized and unlawful trust business:

	GFS	CDM
Serves as Trustee		✓
Held/holds itself out as Trustee	✓	✓
Serves as Guardian	✓	✓
Held/holds itself out as Guardian	✓	✓
Serves as Conservator		✓
Held/holds itself out as Conservator	✓	✓

[8] See Def. Resp. to Pl. Req. to Admit Nos. 9-28; see also Shrader Aff. ¶6; EX. A (Defendant's Client List.)

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Serves as Personal Representative of Estates		✓
Held/holds itself out as Personal Representative of Estates	✓	✓
Serves as Attorney-in-fact pursuant to a Power of Attorney		✓
Held/holds itself out as Attorney-in-fact pursuant to a Power of Attorney	✓	✓

Despite undertaking these activities, Defendants admit that they have never made a written application to the Board to conduct a trust business, nor have they received written permission from the Board to conduct a trust business in South Carolina. Def. Resp. to Pl. Req. to Admit, Nos. 3-6.

Based on the undisputed evidence, Defendants have conducted and continue to conduct an unauthorized and unlawful trust business, and Plaintiff is entitled to an Order declaring that Defendants have violated the law, and permanently enjoining such activity.

II. SOUTH CAROLINA CASE LAW, THE LAW OF ALL FIFTY STATES, FEDERAL LAW, AND MATERIALS ISSUED BY THE STATE BOARD OF FINANCIAL INSTITUTIONS ALL CONSISTENTLY CONFIRM THE MEANING OF "TRUST BUSINESS" AS USED IN SECTION 34-21-10.

BOFI's long-held interpretation regarding the fiduciary duties that constitute "trust business," as contemplated in S.C. Code Ann. § 34-21-10, is supported throughout the South Carolina Code, affirmed in South Carolina case law, mirrored in the law of all other states in the United States and federal law, and reinforced by materials issued by the Board. This understanding of trust business is, furthermore, consistent with the "ordinary and popular significance" of the term (Santee Cooper Resort, 298 S.C. at 184), as well as the "purpose of the whole statute and the policy of the law," (S.C. Coastal Council, 306 S.C. at 44).

Defendants have contended that serving as conservator, guardian, personal representative of an estate, and agent or attorney-in-fact pursuant to a power of attorney do not constitute "trust

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business," and the sole regulated power of a "trust business" is that of serving as a trustee. This contention is unfounded, unsupported, and indeed contradicted throughout the law.

A. BOFI guidance is clear, accurate, consistent, and worthy of deference, and there is no compelling reason to overturn it.

BOFI, through its Board, has issued guidance and taken actions which clearly indicate the appropriate application of "trust business" as used in S.C. Code Ann. § 34-21-10, *et seq*. These materials document the Board's longstanding interpretation of Section 34-21-10.

In cases where a State agency is a party, "If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Sierra Club v. S.C. Dep't of Health & Envtl. Control, 426 S.C. 236, 256 (2019). South Carolina courts "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute [or regulation].'" Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34-35 (2014) (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844 (1984)). "Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n, 310 S.C. 539, 543 (1992). The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Dunton v. S.C. Bd. of Examiners In Optometry, 291 S.C. 221, 223 (1987).

Plaintiff is the agency responsible for approving entities to conduct a trust business in South Carolina, and supervising and examining those entities. S.C. Code Ann. §§ 34-21-10 and 20. Entities approved to conduct a trust business are "subject to rules and regulations promulgated by the Board." S.C. Code Ann. § 34-21-20.

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On June 1, 2022, the Board issued a "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina." Exhibit B. In that guidance, the Board affirms the longstanding industry and regulatory interpretation of the phrase "trust business" as used in S.C. Code Ann. § 34-21-10:

> The Board interprets the phrase "conduct a trust business" as used in S.C. Code Ann. § 34-21-10, to include acting as trustee of a trust (as defined by S.C. Code Ann. § 62-1-201(49)), executor, administrator, or personal representative (as defined by S.C. Code Ann. § 62-1-201(33)), guardian (as defined by S.C. Code Ann. § 62-5-101(9)), conservator (as defined by S.C. Code Ann. § 62-1-201(6)), managing agent (as defined in S.C. Code Ann. § 34-21-210(7)). Additionally, serving as an agent (as defined by S.C. Code Ann. § 62-8-102(1)), also constitutes conducting a trust business.
>
> The Board further interprets the phrase "conduct a trust business" to include holding oneself out as providing or offering the act of serving in these fiduciary roles to the public in South Carolina.

The Policy Statement was reviewed and approved unanimously by the Board's eleven members, nine of whom are actively engaged in financial business, and all of whom are obligated to "represent the best interests of the public" (S.C. Code Ann. § 34-1-20). This Policy Statement is worthy of deference, and there is no compelling reason to overturn it.

Moreover, the Policy Statement is entirely consistent with Plaintiff's position throughout the course of this litigation, and is furthermore consistent with Board actions prior to its discovery of Defendants' unauthorized trust business.

For example, as of June 19, 2018, BOFI entered into the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions. This Agreement serves as a compact between states for regulation of state-chartered trust business, and currently 49 states have entered into it. In the Agreement, "trust business" includes "acting as a fiduciary," and "act as a fiduciary" includes acting "pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a

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minor or incapacitated person," and "administer[ing] in any other fiduciary capacity real or personal property." (Exhibit C, Section 1.1).

Additionally, prior to the present litigation, on April 28, 2020, the Board executed a Consent Order in the matter of J. Earle Financial, LLC, a company which had not been authorized by the Board to conduct trust business. J. Earle Financial, LLC had advertised that it "provides administrative services to trusts, that it serves as a fiduciary to administer assets in conservatorships and estates, and that it can serve as the managing agent to administer trusts," (Green Aff. Ex. 1: p. 2, ¶6). The Board concluded that J. Earle Financial had "held itself out to the public as providing trust business in South Carolina." Id. at p. 5, ¶ 26. Further, because J. Earle Financial, LLC had actually served as trustee of a trust, and as personal representative of an estate, the Board found that it had "conducted trust business in South Carolina." Id. at p. 5, ¶ 27. The Board further concluded that J. Earle Financial "violated S.C. Code Ann. § 34-21-10 by performing trust business in South Carolina without applying to and receiving written approval from the Board."

The Board's decision in the J. Earle Financial matter plainly indicates its interpretation and construction of S.C. Code Ann. § 34-21-10, et. seq., to include the fiduciary powers, beyond that of "trustee," which fall under the purview of BOFI's regulation, and require prior Board approval for an entity to provide those trust business services in South Carolina. The Board's reasoning is worthy of deference, and there is no compelling reason to overturn it. Dunton, 291 S.C. at 223 (1987).

B. The South Carolina Supreme Court and the South Carolina Attorney General have articulated an understanding of trust business that confirms BOFI's guidance.

The South Carolina Supreme Court has indicated that the historical understanding of a trust company involved these additional fiduciary powers, as well. In Bowen v. Strauss, the Court noted

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that the law at the time "empowered banks and trust companies to become executors, guardians, trustees, etc…" 175 S.C. 23, 23 (1935); see also Monteith v. Harby, 193 S.C. 349 (1940) (quoting this language from Bowen).

The South Carolina Attorney General's office has also articulated an understanding that a trust company is an entity "formed for the purpose of taking, executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc." Op. S.C. Att'y Gen (Feb. 9, 1996); 1996 WL 93998 (S.C.A.G).

C. All fifty state laws, and federal law, indicate that serving in the fiduciary roles of trustee, conservator, guardian, personal representative, and other fiduciary roles constitutes "trust business."

Every regulator in the United States, both at the state and federal level, interprets "trust business" to include serving in the fiduciary roles of trustee, conservator, guardian, personal representative, and other fiduciary roles, and every regulator in the United States prohibits entities from serving in these roles without prior approval from the appropriate governing body.

The applicable statutes for all fifty states have been compiled, with appropriate terms highlighted for the Court's convenience, and attached to this Memorandum as Exhibit D. Despite a broad range of wording and formatting, all fifty states of the United States prohibit trust business without prior approval and continued oversight by the state's banking regulator, the conducting of which includes the fiduciary roles of trustee, conservator, guardian, personal representative of estates, and other fiduciary roles. A few of the more succinct examples are as follows:

> •Arizona: "'Trust business' means the holding out by a person to the public at large by advertising, solicitation or other means that the person is available to act as a fiduciary in this state.… 'Fiduciary' means a personal representative, administrator, guardian, conservator, trustee, agent or other person who acts in a fiduciary capacity." Ariz. Rev. Stat. Ann. § 6-851.
>
> •Massachusetts: "'Trust business'--any activity conducted by an executor of a will or codicil, an administrator with the will annexed, an administrator of the estate of any person, a guardian, a conservator, or a trustee under a will or instrument creating a trust for the care

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> and management of property, while he is acting in such a fiduciary capacity." Mass. Gen. Laws Ann. ch. 203, § 4A (West).
>
> •New Jersey: "'For the purposes of this section, 'trust business' means holding out to the public by advertising, solicitation or other means that a person or entity is available to perform any of the services of a trustee or fiduciary in this State or another state, and includes acting as a trustee, testamentary trustee, fiduciary, executor or guardian…" N.J. Stat. Ann. § 17:9A-316 (West).
>
> •Ohio: "'Trust business' means accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business." Ohio Rev. Code Ann. § 1111.01(I) (West).
>
> •Utah: "'Trust business' means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under appointment as trustee for any purpose permitted by law…" Utah Code Ann. § 7-5-1(b) (West).

A review of every state's trust business laws makes it clear that South Carolina would be not only a lone outlier, but indeed become a regulatory Wild West if these corporate fiduciary activities were not regulated by BOFI.

Additionally, the federal regulator of national banks, United State Comptroller of the Currency("OCC"), permits national banks,

> when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

12 U.S.C.A. § 92a.

Based on this myriad of information supporting BOFI's interpretation of the term "trust business," Defendants fail in their contention that the sole regulated power of a "trust business" is that of serving as a trustee.

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BOFI has the sole power to authorize Defendants to serve as trustee, conservator, guardian, personal representative of an estate, and agent or attorney-in-fact pursuant to a power of attorney. Defendants have not sought and BOFI has not provided Defendants with such authority.

The undisputable evidence proves that Defendants have conducted these activities without prior written Board approval, as required by S.C. Code Ann. § 34-21-10. As such, BOFI is entitled to an order declaring that Defendants have violated the law, and enjoining Defendants from all unauthorized trust business activities.

III. DEFENDANTS MUST BE PERMANENTLY ENJOINED FROM CONTINUING TRUST BUSINESS.

In addition to declaring that Defendants violate the law by serving as trustee, conservator, guardian, personal representative, and attorney-in-fact without prior approval from BOFI, this Court should issue a permanent injunction to enjoin Defendants from continuing to conduct an unauthorized and unlawful trust business.

A plaintiff must establish three elements in order to receive an injunction: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366 (2011). In addition to its justification for success on the merits, the evidence in this case thoroughly justifies a permanent injunction ordering a prompt and orderly winding down of Defendants trust business operations.

a. Irreparable Harm

A well-established equitable maxim is that equity follows the law. Atlantic Sav. Bank of Charleston v. Rowland, et al. 133 S.C. 1 (1925). A State agency may obtain an injunction which requires a party to follow the law where citizens would "suffer irreparable harm if the [party] is not required to follow the law." Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 311 (2018).

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In the present case, BOFI is responsible for the approval, supervision, and examination of all South Carolina state-chartered fiduciary corporations authorized to conduct a trust business. S.C. Code Ann. §§ 34-21-10 and 20. Defendants' actions clearly and blatantly violate the law that BOFI is obligated to enforce.

BOFI has proffered the affidavits of three individuals: Jamison Hinds, General Counsel for Colonial Trust Company (South Carolina's only state-chartered trust company); Ronald Gaynor, an estate and probate attorney in Georgetown, South Carolina, where Defendants are located; and Dianne Shrader, a beneficiary of a trust currently trusteed by CDM Corporation. In each of these affidavits, the witnesses express concern that Defendants' operations should be closely regulated by BOFI, and that if BOFI was denied the ability to prohibit Defendants from conducting trust business which violated the law, they would have little or no respect for BOFI's authority to enforce the law. See Shrader Aff.; Hinds Aff.; Gaynor Aff.

Similarly, Richards H. Green, former Commissioner of Banking,[9] articulates, in his affidavit, his concern that "if Defendants are allowed to continue to operate as an unauthorized trust company, above and against the Board's and Agency's objections, this continued and blatant violation of the law will irreparably harm and undermine the Board's and the Agency's authority as a regulator of trust business, and will result in the irreparable erosion of public confidence in the Board's and Agency's ability to fulfill its statutory duties." Green Aff, ¶ 18.

Thus, a permanent injunction is necessary in this case to ensure BOFI's ability to enforce the law, without which immediate and irreparable harm will result to the agency, to the trust business industry, and the general public in South Carolina.

[9] Mr. Green left the position of Commissioner of Banking in January 2022; however, as evidenced by the Board's action in issuing the Policy Statement (Exhibit B), the Board and current Commissioner of Banking, Kathy Bickham, steadfastly maintain the grounds of this lawsuit, BOFI's position, and affirm Mr. Green's assertions as stated in his affidavit.

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b. No Adequate Remedy at Law

In the absence of an injunction, BOFI will be without an adequate remedy—or any remedy at all—to enforce the provisions of law entrusted to it, to protect the general public from unreliable and unsound trust business activities, to protect its reputation as a regulator and supervisory institution, and to protect BOFI-certified trust companies in South Carolina from unfair competition by unlicensed entities conducting unlawful trust business.

Based on these considerations, a permanent injunction enjoining Defendants' trust company operations is both necessary and justified.

CONCLUSION

In conclusion, Plaintiff asks that this Court declare Defendants' trust business operations, including serving as, and holding out to the public as offering the services of, trustee, guardian, conservator, personal representative, and attorney-in-fact, to violate the provisions of S.C. Code Ann. § 34-21-10. Plaintiff further asks this Court to enjoin Defendants from continuing such activity by issuing a permanent injunction, and to unwind their trust company operations in a prompt and orderly fashion, so as to protect the persons affected by Defendants' unlawful activity.

[SIGNATURE PAGE TO FOLLOW}

Respectfully submitted,

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Attorneys for Board of Financial Institutions

August 22, 2022
Columbia, South Carolina

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EXHIBIT A
CDM Client List (redacted)

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Exhibit A
CLIENT LIST of CDM CORPORATION

CLIENT NAME	CLIENT SERVICES	DATE STARTED
A[redacted], M[redacted]	Conservator	July-20
A. H[redacted]	Estate - PR	September-18
A[redacted], T[redacted]	Trust – SC *(Attorney James F. McCrackin was retained by the Estate to move the Trust from CDM Corporation to Stephen Mantell, individually)	July-16
B W[redacted]	Conservator	March- 20
B[redacted]	Estate - PR	
B[redacted], P[redacted]	Guardian	September-20
B[redacted], C[redacted]	Guardian	June-11
B[redacted], C[redacted]	Gdn/Cons	January-18
B[redacted], G[redacted]	Gdn/Cons	November-17
C[redacted], G[redacted]	Guardian	July-20
C[redacted], W[redacted]	Contract	May-17
C[redacted], A[redacted]	Guardian	February-17
C[redacted], J[redacted]	Estate - PR	May-19
D[redacted], A[redacted]	POA	May-15
E[redacted] R[redacted] & L[redacted]	POA	May-20
F[redacted], P[redacted]	Trust – SC *(Attorney F. Miles Adler has petitioned the Horry County Probate Court to authorize Stephen Mantell, individually, to serve as fiduciary)	June-19
G[redacted], B[redacted]	Gdn/Cons	May-15
H[redacted], D[redacted]	Guardian	October-18
H[redacted], K[redacted]	POA	August-17
L[redacted], T[redacted]	Guardian	January-19
L[redacted], J[redacted]	Gdn/Cons	September-20
L[redacted] N[redacted]	Guardian	June-17
L[redacted] M[redacted]	Estate - PR	April-19
L[redacted], L[redacted]	Estate - PR	May-19
M[redacted], L[redacted]	Guardian	June-20

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Exhibit A
CLIENT LIST of CDM CORPORATION

CLIENT NAME	CLIENT SERVICES	DATE STARTED
M[redacted], R[redacted]	Gdn/Cons	April-20
M[redacted],F[redacted]	T. Gdn Pen	September-20
M[redacted], B[redacted]	Guardian	November-20
M[redacted], M[redacted]	POA	August-14
M[redacted], T[redacted] & M[redacted]	POA	December-17
P[redacted], L[redacted]	L Gdn/Cons	November-17
P[redacted],J[redacted]	Contract	November-18
R[redacted], B[redacted]	Guardian	August-18
R[redacted], E[redacted].& E[redacted].	POA	September-16
R[redacted], T[redacted]	Guardian	June-12
R[redacted], A[redacted]	Estate - PR	September-15
R[redacted], C[redacted] & M[redacted]	Trust – SC *(Attorney Brian T. Treacy was retained to move the trusteeship from CDM Corporation to Stephen Mantell, individually)	
S[redacted], S[redacted]	Conservator	November-20
S[redacted], M[redacted]	Guardian	December-17
S[redacted], J[redacted]	Contract	January-19
S[redacted], M[redacted]	Conservator	June-19
S[redacted], V[redacted]	Conservator	June-21
T[redacted], E[redacted]	POA	July-21
T[redacted], J[redacted]	Guardian	August-14
Unit 205	Receivership	November-18
Unit 208	Receivership	November-18
V[redacted], T[redacted]	Guardian	April-14
W[redacted], P[redacted]	Contract	August-17
W[redacted] J[redacted]	Gdn/Cons	June-18
W[redacted], M[redacted]	POA	May-18

EXHIBIT B
Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina

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POLICY STATEMENT CONCERNING THE CONDUCTING OF TRUST BUSINESS BY NON-DEPOSITORY ENTITIES IN SOUTH CAROLINA

The South Carolina Board of Financial Institutions ("Board") issues the following policy statement regarding the activities of non-depository[1] entities which constitute conducting trust business in South Carolina.

S.C. Code Ann. § 34-21-10 provides as follows:

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. ... [P]rovided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

I. Entities For Whom Prior Board Approval is Required

Per this section, prior Board approval to conduct a trust business is required for any "corporation, partnership or other person," which includes, but is not limited to limited liability companies ("LLC's"), non-profit corporations,[2] and any other entity that is not a "natural person." Similarly, where an individual purports to conduct trust business by, through, and/or as agent for any entity that is not a "natural person," that entity must obtain prior Board approval, unless otherwise exempt from doing so.

II. Activities Which Constitute Conducting A Trust Business

The Board interprets the phrase "conduct a trust business" as used in S.C. Code Ann. § 34-21-10, to include acting as trustee of a trust (as defined by S.C. Code Ann. § 62-1-201(49)), executor, administrator, or personal representative (as defined by S.C. Code Ann. § 62-1-201(33)), guardian (as defined by S.C. Code Ann. § 62-5-101(9)), conservator (as defined by S.C. Code Ann. § 62-1-201(6)), managing agent (as defined in S.C. Code Ann. § 34-21-210(7)). Additionally, serving as an agent (as defined by S.C. Code Ann. § 62-8-102(1)), also constitutes conducting a trust business.

---

[1] In order to avoid confusion regarding the various approval requirements for depository institutions with trust powers, the Board issues this guidance specifically to provide clarity for non-depository institutions. This guidance shall not be construed to negate or otherwise modify the approval and regulatory requirements for depository institutions conducting trust business.

[2] Note, however, the narrow exception that allows a nonprofit corporation to serve as "a trustee of a trust in which it has a beneficial interest" without prior Board approval. S.C. Code § 33-31-302(9).

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The Board further interprets the phrase "conduct a trust business" to include holding oneself out as providing or offering the act of serving in these fiduciary roles to the public in South Carolina.

In addition to these explicitly defined fiduciary roles, the Board acknowledges that there exists a broad range of fiduciary activities[3] which might constitute conducting a trust business. This guidance does not constitute a comprehensive list of activities which constitute trust business. The Board strongly advises entities to contact the Office of the Commissioner of Banking with questions regarding whether specific activities constitute conducting a trust business.

III. When Board Approval is Required for Entities Approved to Conduct a Trust Business in Other States

A non-depository entity approved to conduct a trust business in another state must obtain prior Board approval in order to conduct a trust business in South Carolina, as defined above, prior to maintaining a physical location in South Carolina, or undertaking operations in South Carolina which necessitate obtaining a Certificate of Authority from the South Carolina Secretary of State pursuant to S.C. Code Ann. § 33-15-101.

Entities approved to conduct a trust business in other states seeking to obtain approval to conduct a trust business in South Carolina should note that the Board has entered into the Conference of State Bank Supervisors Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions ("CSBS Agreement"). If the entity's home state supervisor has also entered into this Agreement, prior written approval from the Board is still required; however, the Board will follow the approval procedures set forth in the CSBS Agreement, to the extent permitted by South Carolina law.

An entity approved to conduct a trust business by another state will only be approved to conduct trust business in South Carolina in the same manner, and with the same powers and limitations under which the entity has been approved in that entity's home-state, and only to the extent such powers are allowed by South Carolina law.

On this 1 day of June 2022, the Board hereby adopted and issued this policy statement.

Curtis M. Loftis, Jr.
Chairman
South Carolina Board of Financial Institutions

[3] The Board does not consider accountants, attorneys, investment advisors, real estate brokers or sales agents, or securities brokers or dealers, when acting as agents for their respective firms, to be engaged in conducting trust business with respect to fiduciary activities which are customarily performed as a necessary and traditional incident to their regular business activities, so long as the individuals are licensed to take such actions in South Carolina through their respective licensing authorities.

EXHIBIT C
Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions

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NATIONWIDE COOPERATIVE AGREEMENT FOR SUPERVISION AND EXAMINATION OF MULTI-STATE TRUST INSTITUTIONS

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ARTICLE 1. DEFINITIONS

Section 1.1. Specific Terms.

For purposes of this Agreement:

1. "Act as a fiduciary" refers to the standard of law, however styled, in a host state describing the trust activities by a trust institution requiring such institution to be licensed as a trust company in the host state or qualify for an exception to such licensing requirement. By way of illustration, only, such actions generally include one or more of the following when conducted in the host state:

   (a) accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

   (b) administer in any other fiduciary capacity real or personal property; or

   (c) act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

2. "Bank" has the meaning set forth in 12 U.S.C. § 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. § 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Somoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

3. "Branch" means a bank branch as defined by host state law.

4. "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent but not the contingent beneficiaries of an account.

5. "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

6. "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. §§ 1813(c)(2) & (3).

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7. "An emergency" shall include, but not be limited to, the existence of conditions or circumstances which, if allowed to continue, will likely result in harm to the public.

8. "Enforcement action" means any action whether civil, criminal, administrative, or equivalent action, to enforce banking, trust or any other applicable laws.

9. "Federal bank regulatory agency" means the Federal Reserve System in the case of a bank which is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation in the case of a bank which is not a member of the Federal Reserve System.

10. "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the federal International Banking Act of 1978, chartered to act as a fiduciary in a state other than the host state.

11. "Home state" means the state where a multi-state trust institution is chartered.

12. "Home state supervisor" means the state supervisory agency with primary responsibility for chartering and supervising a multi-state trust institution.

13. "Host state" means a state other than the home state of a trust institution where the trust institution maintains or seeks to establish an office or seeks to engage in any trust activity.

14. "Host state supervisor" means the state supervisory agency of the host state with respect to a multi-state trust institution.

15. "License" means the authority granted by the host state supervisor to a multi-state trust institution to establish, acquire or maintain a trust office in the host state.

16. "Multistate trust institution" means a trust institution operating or seeking to operate in more than one state.

17. "Office" with respect to a multi-state trust institution means a trust office or a representative trust office, but not a branch.

18. "Originating authority" means the state supervisory agency that originally compiles or drafts an item of supervisory information.

19. "Out-of-state bank" means a bank which is an out-of-state trust institution.

20. "Out-of-state trust institution" means a trust institution that is not chartered by the host state.

21. "Person" means an individual, a company or any other legal entity.

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22. "Registration" means the process by which a trust institution has been authorized by the host state supervisor to acquire, establish or maintain a representative trust office in the host state.

23. "Representative trust office" means an office at which a multi-state trust institution has been authorized by the host state supervisor to engage in any trust business other than acting as a fiduciary.

24. "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

25. "State bank" means a bank chartered to act as a fiduciary by a state supervisory agency.

26. "State supervisor" or "state supervisory agency" means the department, division or agency of state government that exercises supervisory jurisdiction over banks and/or trust companies.

27. "Supervisory information" means all information and reports compiled or drafted in the ordinary course of supervising and examining a multi-state trust company, including reports of examination and information relating to applications, complaints, and enforcement actions, or copies thereof.

28. "Trust activity" means any activity by a multi-state trust institution within a host state which constitutes under host state law:

    (a) Acting as a fiduciary,

    (b) Doing a trust business; or

    (c) Marketing or soliciting any trust business or providing any administrative or client services in connection with (a) or (b) above.

29. "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service as a fiduciary in the host state, including but not limited to:

    (a) acting as a fiduciary, or

    (b) to the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as custodian, assignee, bailee, conservator, transfer agent, escrow agent, registrar or receiver; or (iii) acting as financial advisor, investment advisor, agent or attorney-in-fact in any agreed upon capacity.

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30. "Trust company" means a state trust company or any other company chartered under home state law to act as a fiduciary that is neither a depository institution nor a foreign bank.

31. "Trust institution" means a depository institution, foreign bank, state bank or trust company.

32. "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the host state supervisor to act as a fiduciary.

Section 1.2. Other Defined Terms.

As used in this Agreement, unless otherwise specified, (a) all references to sections, articles, or paragraphs are to sections, articles, or paragraphs to this Agreement, and (b) "hereof" and "herein" refers to this Agreement in its entirety unless otherwise specified.

ARTICLE 2. STATEMENT OF PURPOSE

Section 2.1. Background.

Host states have not typically permitted out-of-state trust institutions to engage in a trust business in the host state or to conduct trust activities in the host state except for the following:

(a) On a reciprocal basis, usually requiring the out-of-state trust institution to obtain authority to act as a fiduciary in the host state on a particular account from the host state supervisor; and

(b) Marketing and soliciting in the host state.

In fact. some host state statutes and regulations as interpreted traditionally did not permit either of the above activities by out-of-state trust institutions.

In 1994, Congress acted on interstate banking, by adopting the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. In doing so, Congress opened the door for national banks to operate branches on a nationwide basis.

CSBS responded with recommended statutory options and eventually facilitated unanimous acceptance of the Nationwide Cooperative Agreement for interstate banking and branching in 1997. The cumulative effect of the Nationwide Cooperative Agreement has been extremely positive for state banking institutions and state supervisory agencies alike. CSBS and the state trust supervisors agree that similar coordinated supervision of multi-state trust institutions is an important objective as well.

In March 1997, the CSBS Multistate Trust Institutions Project Working Group provided CSBS members with Statutory Options for Multistate Trust Activities. These options were designed to assist states in their efforts to enact legislation to maintain competitive, responsive,

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safe and sound trust services for the citizens of their states. To achieve these goals, the states were also encouraged to enter into cooperative agreements tailored to the unique corporate structure and business strategy of the multi-state trust institutions involved.

Since the publishing of the Statutory Options for Multistate Trust Activities, many states have adopted legislation based on, or incorporating portions of, those options and have accordingly permitting multistate trust institutions to operate in those host states on a broader basis. Other states have modified their laws in other ways to permit more interstate trust activity. Consequently, the historical pattern has changed so that while some states continue to prohibit any trust activity in that state by an out-of-state trust institution, virtually all states now permit one or more of the following activities:

(a) Reciprocal interstate trust activity;

(b) Marketing and soliciting of trust business by out-of state institutions in the host state, but without an office in the host state;

(c) Any trust activity in the host state as long as it does not constitute "doing a trust business" as defined by host state law;

(d) Operating one or more representative trust offices in the host state; and

(e) Operating one or more trust offices in a host state.

Section 2.2. Purpose and Intent.

(a) The purposes of this Agreement are to promote a comprehensive nationwide system to supervise and examine multi-state trust institutions cooperatively among the states; to foster effective coordination and communication among the parties to the Agreement; to avoid unnecessary regulatory duplication and to facilitate the process of supervision and examination with the least regulatory burden to multi-state trust institutions; and to enhance responsiveness to local needs and interests.

(b) It is not the intent of this Agreement to determine what activities a multi-state trust institution may conduct in a host state, with or without licensing or registration, or to otherwise modify either home state or host state law. Rather it is the intent of this Agreement to provide an allocation of supervisory responsibility and activity between the host state supervisor and the home state supervisor with respect to multi-state trust institutions permitted by the host state to engage in a trust business or conduct any other trust activities in the host state.

(c) Nothing in this Agreement is intended to govern or affect the trust activities of an out-of-state bank at a branch located in the host state.

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Section 2.4. Responsibilities.

The parties recognize that the home state supervisor is the primary regulator and will act as the single point of supervisory contact. The home state supervisor is primarily responsible for supervising its multi-state trust institutions, including offices that may be established in various host states. In addition, the parties recognize that host state supervisors have a legitimate interest in monitoring the safety and soundness of multi-state trust institutions that operate offices or otherwise conduct trust activities in their states and in assuring those facilities and activities are operated in compliance with host state law.

Overall, the parties will cooperate to assure that each of their material interests, authorities and responsibilities is fulfilled.

ARTICLE 3. INFORMATION SHARING

Section 3.1. Request for Information.

A state supervisor may at any time request from another state supervisor, supervisory information regarding a state chartered multi-state trust institution doing business in both states. The request shall be made in writing by the state supervisor or the supervisor's designee.

A request by a state supervisor should be reasonably specific as to the documents or information sought. The state supervisor may request items relating to a particular event, such as a specific examination report, or may make a standing request for all items of a particular nature or relating to a specific multi-state trust institution.

The state supervisor shall limit its use of information obtained under this Agreement to purposes directly related to its supervisory authority.

When a federal or other state regulatory agency requests information from a host state, the host state should refer the request for information to the home state.

Section 3.2. Providing Information.

The state supervisor shall comply with a request for supervisory information within a reasonable time to the fullest extent permitted by state law. Supervisory information protected by federal law shall not be provided until the permission of the appropriate federal bank regulatory agency is obtained, following appropriate federal disclosure procedures.

Section 3.3. Confidentiality.

Supervisory information shared under this Agreement shall be presumed to be confidential unless otherwise specified by the originating authority. To the fullest extent permitted by law, the parties will treat information obtained under this Agreement with the same degree of confidentiality that applies to the information in the hands of the originating authority.

Supervisory information shared under this Agreement remains the property of the originating authority and shall not be further disclosed by the recipient without the written permission of the originating authority, except as otherwise required by applicable law or order of a court of competent jurisdiction. Supervisory information obtained under this Agreement should be returned or destroyed.

Section 3.4. Subpoenas.

As soon as reasonably practicable after receipt of a subpoena or other legal process by any court, legislative body or governmental agency, or any request from another person or entity not a party to this Agreement seeking disclosure of supervisory information supplied by the originating authority, and before disclosing any supervisory information, a state supervisor shall notify the originating authority so that the originating authority may have an opportunity to challenge the release of the information. Home state and host state supervisors shall cooperate in the preparation of any memoranda, request for protective order, or pleadings deemed desirable by the originating authority to protect the confidentiality of supervisory information.

ARTICLE 4. RESPONSIBILITY FOR EXAMINATION

Section 4.1. Role of Home State Supervisors.

To promote a single point of contact, the home state supervisor shall be responsible for examining its multi-state trust institutions for safety and soundness and compliance with applicable laws, including coordination with the host state supervisors, the appropriate federal bank regulatory agency, if applicable, and trust company management. Subject to available examiner resources, the home state supervisor and host state supervisor may agree to use host state examiners in trust examinations of multi-state trust institutions.

The home state supervisor shall give reasonable notice to each host state supervisor of the timing and scope of an upcoming multi-state trust institution examination.

The home state supervisor should consult with and, if appropriate, use host state examiners to examine for compliance with applicable host state laws, including but not limited to trust, estate, probate and consumer protection laws.

The home state supervisor shall cooperate with the host state supervisor in designating the examiner-in-charge of a multi-state trust institution trust examination. If the home state supervisor participates in an examination program with the federal bank regulatory agencies, the examiner-in-charge may be an examiner employed and selected by a federal bank regulatory agency. The examiner-in-charge shall designate the examination responsibilities of each examiner involved in the examination. Each examiner involved in an examination shall perform the responsibilities designated and promptly report the findings to the examiner-in-charge in the form requested, together with supporting work papers. The designated examiner-in-charge shall rely on the guidance of the participating state supervisors in applying applicable laws to branches or offices in their state.

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The designated examiner-in-charge shall compile the examination findings and advise all participating supervisors of the findings, any required follow-up actions and any proposed enforcement actions.

Section 4.2. Role of Host State Supervisors.

The host state supervisors, will participate with the home state supervisors in determining the use of host state examiners in trust examinations of multi-state trust institutions.

The host state supervisors may keep copies of examination findings and supporting work papers they create while participating in the home state supervisor's examination.

A host state supervisor shall advise the home state supervisor whenever the host state supervisor has reasonable cause to believe an examination of an office of a multi-state trust institution is necessary due to an emergency or otherwise required by host state law. If the home state supervisor is unable or unwilling to undertake the examination in a reasonable time, the host state supervisor may conduct the examination. A host state supervisor who conducts an examination under this provision shall observe the provisions of this Agreement otherwise governing a home state supervisor conducting an examination.

Section 4.3. Planning and Scheduling.

Each home state supervisor, in consultation with host state supervisors and the appropriate federal bank regulatory agency, if applicable, shall schedule its regular examinations of multi-state trust institutions. Each home state supervisor shall promptly furnish its schedule for examinations to each relevant host state supervisor together with the home state supervisor's anticipated request for host state supervisor's assistance in conducting the examinations.

Section 4.4. Efficient Use of State Resources.

If the home state supervisor and host state supervisor(s) agree to jointly conduct an examination of a multi-state trust institution in order to facilitate efficiencies in the examination process, and to reduce regulatory burden, the supervisors may enter into separate bilateral agreements governing the sharing of resources and compensation for services rendered to the extent permitted by the laws of their respective jurisdictions.

ARTICLE 5. ENFORCEMENT ACTIONS

Section 5.1. Home State Notification and Action.

The home state supervisor shall be primarily responsible for initiating trust enforcement actions against a multi-state trust institution. The home state supervisor shall notify all host state supervisors immediately of any enforcement action, formal or informal, taken against a multi-state trust institution. If reasonably practicable, notification by the home state supervisor will be given in advance of the enforcement action. Enforcement actions to address violations of host state laws where possible shall be taken jointly by home state and host state supervisors.

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Section 5.2. Emergency Action by Host State.

Notwithstanding Section 5.1., the host state supervisor may in an emergency, upon reasonable notice to the home state supervisor, or when otherwise required by host state law, take any enforcement action against a multi-state trust institution permitted under host state law.

ARTICLE 6. APPLICABLE LAWS

The parties recognize that neither home nor host state supervisors may be empowered to waive provisions of home or host state law directly applicable to multi-state trust institutions, or their offices or trust activities in host states. However, to the extent it may assist counsel and judicial authorities in resolving issues of applicable law, the parties agree that those issues may be resolved using the following general principles.

Section 6.1. Host State Law.

Host state law shall apply generally to the operations in a host state of a multi-state trust institution, including, without limitation: (i) trust, estate and probate law; (ii) consumer protection laws; and (iii) licensing, registration or other nondiscriminatory filing requirements.

Section 6.2. Home State Law.

To the extent that, based on the principles referred to in Section 6.1., host state law is determined to be inapplicable to particular operations of a host state office of a multi-state trust institution or other trust activities in the host state, such operations and activities shall be governed by home state law. In addition, home state law shall apply generally to the corporate structure and procedures and internal policies of a multi-state trust institution including: (i) charter and bylaws; (ii) incorporation and dissolution; (iii) board of directors and management; (iv) capital; (v) loans and investments; (vi) common trust funds; (vii) dividends; (viii) indemnification of directors and officers; (ix) stock and debt; and (x) structure of trust company subsidiaries.

Section 6.3. List of State Laws.

Each of the parties may, for purposes of general guidance, supply to the other a list of state laws under Sections 6.1 and 6.2 that may be applied to multi-state trust institutions operating within their borders, indicating which state agency is responsible for implementing each of the laws.

ARTICLE 7. APPLICATIONS

Section 7.1. Approval Authority.

Unless otherwise expressly provided under host state law, the home state supervisor shall have approval authority over all applications from a multi-state trust institution.

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Section 7.2. Notification to Host State.

The home state supervisor shall provide to each applicable host state supervisor notice of all applications/notifications relating to offices of a multi-state trust institution within their borders and shall take their views into account in the approval process. The host state supervisor shall immediately notify the home state supervisor if any provisions of the Agreement violate host state law. Also, when the home state supervisor reaches a decision in the approval process, the home state supervisor shall communicate this decision to the host state supervisor.

The home state supervisor shall provide to each host state supervisor notice of all applications/notifications by a multi-state trust institution to enter into a major corporate transaction such as a merger, acquisition, change of control or recapitalization and shall take their views into account in the approval process. Copies of the applications/notifications will be provided to host state supervisors upon request.

When host state law requires receipt or approval by the host state supervisor of an application for a license or registration of an office of a multi-state trust institution, the host state supervisor will use and rely on the application/notification filed by the multi-state institution with the home state supervisor, to the extent reasonably possible. The host state supervisor will require the multi-state trust institution to file only such additional information as it may require to act on the application/notification under host state law.

ARTICLE 8. COMPLAINTS

Section 8.1. Responsibilities.

The home state supervisor and the host state supervisor will agree as to which agency shall have the primary responsibility for the processing and resolution of consumer complaints filed against multi-state trust institutions by residents of their respective states. Information summarizing the volume, nature and resolution of consumer complaints will be provided by the designated supervisor on at least a quarterly basis. Instances of serious consumer abuse, violations of law and/or patterns of practice which cause serious supervisory concerns will be promptly reported and jointly resolved.

Section 8.2. Enforcement Actions.

Any enforcement action resulting from a complaint against a host state branch or office shall be taken as provided in Article 5 of this Agreement.

ARTICLE 9. PARTIES

Section 9.1. Representations and Warranties.

Each signatory state supervisor represents and warrants that he or she has all requisite power and authority to enter into and perform this Agreement and to the extent consistent with

state law, any party acting within the scope of this Agreement shall be deemed to be acting within the scope of the signatory state supervisor's statutory authority.

Section 9.2. Change in Power or Authority.

In case there is any material change in the power or authority of any signatory state supervisor to perform this Agreement, such state supervisor shall promptly give notice of the change to the other state supervisors.

ARTICLE 10. EXECUTION, ENFORCEABILITY, OTHER AGREEMENTS AND TERMINATION

Section 10.1. Execution.

The terms of this Agreement shall become effective for a state when the state supervisor of that state has executed the original or a counterpart signature page. Also, this Agreement is not intended to be limited to the original signatories, and other parties may sign after the initial execution of this document.

Section 10.2. Binding and Enforceable.

This Agreement shall be binding and enforceable on the parties to the extent allowed by state law.

Section 10.3. Other Agreements.

This Agreement is not intended to prevent the parties from entering into other agreements with individual parties, state financial institution supervisory agencies, or other regulatory agencies as may be necessary or appropriate, nor shall it prevent the parties from entering into agreements with individual trust institutions regarding the subject matter of this Agreement.

Section 10.4. Amendment and Termination.

Any party to this Agreement may propose an amendment at any time, but this Agreement may be amended only by a written instrument signed by each of the signatory state supervisors.

Notwithstanding the preceding paragraph, technical changes to this Agreement that are necessary or appropriate in light of changes in federal law shall in the absence of objections from any signatory state supervisor, take effect 30 days after the CSBS Board of Directors has approved such changes and provided written notice thereof to all signatory state supervisors.

Any party to this Agreement may withdraw from the Agreement at any time by giving written notice of withdrawal or termination to all other parties. The withdrawal of any party shall terminate the participation of the respective signatory state supervisor 90 days after the date of withdrawal unless the remaining parties waive the 90 day notice period.

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Section 10.5. Impact on State Law.

Nothing in this Agreement is intended or shall be construed to preempt or otherwise contravene applicable state law governing multi-state trust institutions except to the extent, if any, explicitly adopted and given the force of law by a state supervisory agency with state law authority to do so.

ARTICLE 11. MISCELLANEOUS

Section 11.1. Captions.

The captions in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not affect the meaning or constructions of any provision of this Agreement.

Section 11.2. Waiver.

The waiver by any state supervisor of the performance of any provision of this Agreement shall not invalidate this Agreement, nor shall it be considered a waiver of any other provision. The waiver by any state supervisor of the time for performing any act required by this Agreement shall not be considered a waiver of the time for performing any other act or an identical act required to be performed at a later time.

Section 11.3. Survival.

In the absence of state law to the contrary, this Agreement shall survive any change in the identity of the executive in charge of any home or host state supervisor.

Section 11.4. Severability.

If any provision of this Agreement or the application thereof to any person or circumstances is held invalid or illegal, such invalidity or illegality shall not affect other provisions or applications of this Agreement which can be given effect without the invalid or illegal provision or application, and to this end, the provisions of this Agreement are declared to be severable.

[The remainder of this page is intentionally blank.]

Signed:	Of:	Date:
	Ohio	10/10/2000
	Oklahoma	6-2-99
	Oregon	6-2-99
	Pennsylvania	JAN 7 00
	Puerto Rico	
	Rhode Island	10/17/13
	South Carolina	06/19/2018
Richard A. Duncan	South Dakota	6-20-99
	Tennessee	6-2-99
	Texas	6/2/99
	Utah	6-3-99
	Vermont	June 2, 1999
	Virginia	6-2-99

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EXHIBIT D
Trust Business Definition and Approval Requirements in Every State

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TRUST BUSINESS DEFINITION AND APPROVAL REQUIREMENTS IN EVERY STATE

Alabama

Ala. Code § 5-1A-2

(1) BANK. Any banking corporation or trust company organized under the laws of this state under the jurisdiction of the Superintendent of Banks of this state or organized under the laws of the United States having its principal place of business in this state.

Ala. Code § 5-11A-2

No bank shall have the right to operate or conduct a trust department or become a trustee or a fiduciary without having received the prior written approval of the superintendent and otherwise complied with Section 5-11A-1, even though the certificate of incorporation of the bank might contain language covering such authority.

Ala. Code § 5-11A-1

All corporations organized and operating as trust companies shall have the word "trust" as a part of their corporate names, shall be amenable to the general banking laws of the state insofar as said laws are applicable to trust companies and not in conflict with the provisions of this chapter and shall be examined by the superintendent as state banks are examined. The word "trust" need not be a part of the corporate name of any corporation now or hereafter organized under the laws of this state to do a banking business and all such banks, although the word "trust" is not a part of their corporate names, shall have the right to operate and conduct a trust department, become trustees for any purpose, be appointed and act as executors, administrators, guardians and receivers and do any business and exercise any powers incident to the business of trust and banking companies doing banking business after the board of directors of the corporation shall have adopted an appropriate resolution and obtained the written approval of the superintendent authorizing the conduct and operation of a trust department, and a copy of such resolution and written approval certified to by the president and cashier of such bank under the corporate seal of such corporation shall have been filed in the office where the certificate of incorporation of the bank has been filed.

Alaska

Alaska Stat. Ann. § 06.26.010 (West)

(a) Notwithstanding other provisions of law and except as provided in AS 06.26.020, a person may not act as a fiduciary in this state unless the person is

(1) a trust company organized under this chapter;

(2) a private trust company that has received an exemption under AS 06.26.200;

(3) a state financial institution;

[…]

Alaska Stat. Ann. § 06.26.050 (West)

(a) A trust company may perform any act as a fiduciary that a state financial institution, or a national bank exclusively exercising trust powers, may perform, including
(1) acting as trustee under a written agreement;
(2) receiving money and other property as trustee for investment in real or personal property;
(3) acting as a trustee and performing the fiduciary duties committed or transferred to it by a court;
(4) receiving money or other assets under AS 06.35;
(5) acting as an executor, an administrator, or a trustee of the estate of a deceased person;
(6) acting as a custodian, guardian, conservator, or trustee for a minor or an incapacitated person;
(7) acting as a successor fiduciary to a depository;
(8) receiving for safekeeping any type of personal property;
(9) acting as a custodian, an assignee, a transfer agent, an escrow agent, a registrar, or a receiver;
(10) acting as an investment adviser, an agent, or an attorney-in-fact in any agreed upon capacity;
(11) exercising additional powers expressly authorized by a regulation adopted under this chapter; and
(12) exercising an incidental power that is reasonably necessary to enable it to fully exercise the powers expressly conferred according to commonly accepted fiduciary customs and usage.

Arizona

Ariz. Rev. Stat. Ann. § 6-851
1. "Trust business" means the holding out by a person to the public at large by advertising, solicitation or other means that the person is available to act as a fiduciary in this state and accepting and undertaking to perform the duties as such a fiduciary in the regular course of business.
[…]
7. "Fiduciary" means a personal representative, administrator, guardian, conservator, trustee, agent or other person who acts in a fiduciary capacity and who is not exempt by § 6-852.

Ariz. Rev. Stat. Ann. § 6-853
A. A person shall not engage in the trust business without first obtaining a certificate from the deputy director except as provided by subsection B or C of this section, or by § 6-852, subsection C.

Arkansas

Ark. Code Ann. § 23-51-102 (West)
(2) "Act as a fiduciary" or "acting as a fiduciary" means to:
(A) Accept or execute trusts, including to:
(i) Act as trustee under a written agreement;
(ii) Receive money or other property in its capacity as trustee for investment in real or personal property;
(iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;

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(iv) Act as trustee of the estate of a deceased person; or
(v) Act as trustee for a minor or incapacitated person;
(B) Administer in any other fiduciary capacity real or tangible personal property; or
(C) Act pursuant to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;
[…]
(49) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:
(A) Acting as a fiduciary, or
(B) To the extent not acting as a fiduciary, any of the following:
(i) Receiving for safekeeping personal property of every description;
(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or
(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity;

Ark. Code Ann. § 23-51-165 (West)
(a) A company shall not act as a fiduciary in this state except:
(1) A state trust company;
(2) A state bank;
(3) An association organized under the laws of this state and authorized to act as a fiduciary under § 23-37-101 et seq.;
(4) A national bank having its principal office in this state and authorized by the United States Comptroller of the Currency to act as a fiduciary under 12 U.S.C. § 92a;
(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
(6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;
(7) An out-of-state bank with a branch in this state established or maintained under the Arkansas Interstate Banking and Branching Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner under this chapter;
(8) An out-of-state trust company with a trust office licensed by the commissioner under this chapter; or
(9) A foundation.
(b) A company shall not engage in an unauthorized trust activity.

California
Cal. Fin. Code § 1561 (West)
(a) "Bank" means any of the following:
(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.
[…]

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(g) "Fiduciary capacity" means trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity.
(h) "Fiduciary powers" means the powers granted a bank by virtue of its receipt of the authority to engage in trust business from the commissioner.
[…]
(k) "Trust office" means an office of a bank, other than a main office, at which the bank engages in the trust business. A trust office that engages in core banking business, as defined in subdivision (b) of Section 1670, is considered a branch office of the bank.

Cal. Fin. Code § 1550 (West)
No corporation shall engage in the trust business unless:
(a) Its articles comply with the requirements of subdivision (b), (d), or (e) of Section 1100; and
(b) It has received from the commissioner a certificate of authority pursuant to Section 1042 to engage in the trust business, or, if it is a bank, has received the authorization of the commissioner to engage in the trust business; and
(c) It has deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1570) of this chapter.

Colorado
Colo. Rev. Stat. Ann. § 11-109-101 (West)
(1) "Act as a fiduciary" or "acting as a fiduciary" means to:
(a) Accept or execute trusts, including to:
(I) Act as trustee under a written agreement;
(II) Receive money or other property in the capacity as trustee for investment in real or personal property;
(III) Act as trustee and perform the fiduciary duties committed or transferred to the trustee by order of a court of competent jurisdiction;
(IV) Act as personal representative or trustee of the estate of a deceased person; or
(V) Act as trustee for a minor or incapacitated person;
(b) Administer real or tangible personal property in any other fiduciary capacity; or
(c) Act pursuant to an order of a court of competent jurisdiction as personal representative, executor, or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.
[…]
(10) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service authorized pursuant to section 11-109-201, including acting as a fiduciary.
(11) "Trust company" means a corporation organized pursuant to and subject to regulation by the provisions of this article.

(12) "Trust institution" means a trust company, a federal or state chartered bank with trust powers, a state bank with trust powers chartered under the laws of another state, or a trust company chartered under the laws of another state.

Colo. Rev. Stat. Ann. § 11-109-601 (West)
It is unlawful for any person to carry on or conduct in this state a trust company business, or to advertise or hold himself or herself out as being engaged in or doing a trust company business, or to use the word "trust" or words "trust company" in connection with a business unless such person has complied with the provisions of this article 109 or other laws of this state specifically authorizing a fiduciary or trust business. Any person who violates this section commits a class 2 misdemeanor.

Connecticut
Conn. Gen. Stat. Ann. § 36a-2 (West)
(12) "Connecticut bank" means a bank and trust company, savings bank or savings and loan association chartered or organized under the laws of this state
[…]
(73) "Trust bank" means a Connecticut bank organized to function solely in a fiduciary capacity
[…]
(31) "Fiduciary" means a person undertaking to act alone or jointly with others primarily for the benefit of another or others in all matters connected with its undertaking and includes a person acting in the capacity of trustee, executor, administrator, guardian, assignee, receiver, conservator, agent, custodian under the Connecticut Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act, and acting in any other similar capacity;

Conn. Gen. Stat. Ann. § 36a-380 (West)
(a) Except as provided in this section, no entity, other than a bank or out-of-state bank that maintains in this state a branch as defined in section 36a-410, shall have or exercise in this state the power to receive, by grant, assignment, transfer, devise, bequest or otherwise, any money, securities or other personal property, or any interest in real estate from any person in trust, to hold, manage or dispose of the same for the benefit of any third person, or to accept or execute any such trust, unless such entity is specifically empowered so to act by a general statute of this state or by a special act of the General Assembly. Any entity so empowered to act as trustee, other than such bank or out-of-state bank, shall, before so acting, obtain a license from the commissioner as provided in subsection (b) of this section.

Delaware
Del. Code Ann. tit. 5, § 765 (West)
In the case of a corporation established as a trust company under this chapter, the powers conferred by § 761 of this title shall include the right or power to be appointed executor of a will, codicil or writing testamentary, administrator with the will annexed or administrator of the estate of any decedent, receiver, assignee, guardian, conservator or trustee by will or by any written instrument or other act of the parties, or by any court or official, under the same circumstances,

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in the same manner, and subject to the same control by the court having jurisdiction of the same, as a legally qualified individual.

Del. Code Ann. tit. 5, § 902 (West)
No bank or trust company not actively engaged in business in this State prior to January 1, 1933, shall transact any business in this State or open a place of business in this State without having first secured from the State Bank Commissioner a certificate authorizing it to begin the transaction of business and to open a place of business in this State.

Florida
Fla. Stat. Ann. § 660.41 (West)
All corporations are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:
(1) As personal representative of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent is original or ancillary; however, if the personal representative of the estate of a nonresident decedent is a corporation duly authorized, qualified, and acting as such personal representative in the jurisdiction of the domicile of the decedent, it may as a foreign personal representative perform such duties and exercise such powers and privileges as are required, authorized, or permitted by s. 734.101.
(2) As receiver or trustee under appointment of any court in this state.
(3) As assignee, receiver, or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.
(4) As fiscal agent, transfer agent, or registrar of any municipal or private corporation, except that this prohibition shall not be so construed as to prevent banks, associations, and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent, or registrar of municipal or private corporations of this state. Nothing herein shall prevent any Florida corporation that is not a bank, association, or trust company and that does not have trust powers from being its own fiscal agent, transfer agent, or registrar concerning its own affairs, stock, or securities. Nothing herein shall prevent any Florida corporation or corporation having its principal place of business in Florida registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Securities and Exchange Commission from acting as a transfer agent for any other private corporation. Nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank, foreign association, or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a cotrustee, from: making loans or committing to make loans to any other person; contracting, in this state or elsewhere, with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; servicing directly or entering into servicing

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contracts with persons, and enforcing in this state the loans made by it or obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized or permitted hereby; or acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby. However, no such foreign bank, foreign association, or foreign trust company shall be deemed to be transacting business in this state, shall be required to qualify so to do, or shall be deemed to be unlawfully exercising powers or duties, acting in an unlawful or prohibited capacity, or violating any of the provisions of this section or of any other law of this state solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; further, nothing herein shall be construed as authorizing or permitting any foreign bank, association, or trust company to maintain an office within this state.
This section does not apply to banks or associations and trust companies incorporated under the laws of this state and having trust powers, banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank pursuant to s. 658.2953 and having trust powers, or national banking associations or federal associations authorized and qualified to exercise trust powers in Florida.

Fla. Stat. Ann. § 660.34 (West)
Every trust company and every trust department shall have:
(1) The right and power to act, alone or jointly with any other person, in any and every fiduciary capacity for or in connection with any and all fiduciary accounts of or pertaining to any business organization or other person, and any government, governmental body or other governmental entity or officer or body politic, and to engage in and conduct a general trust business.
(2) All the rights, privileges, and immunities, and all the duties and obligations, appertaining to any fiduciary capacity assigned to or assumed by it and to fiduciaries generally.
(3) The right and the power to effectuate, exercise, carry out, and otherwise implement, in any lawful manner, any and all its lawful duties, obligations, rights, privileges, and immunities in connection with any fiduciary capacity assigned to or assumed by it and in connection with the conduct of its trust business; however, nothing in this chapter shall be construed as authorizing a trust company or trust department to accept deposits except in its fiduciary capacity.

Georgia
Ga. Code Ann. § 7-1-242 (West)
(a) No corporation, partnership, or other entity may lawfully act as a fiduciary in this state except:
(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;
(2) A trust company;
(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

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(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;
(5) Attorneys at law licensed to practice in this state, whether organized as a professional corporation or otherwise;
(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided that this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates, or Title 29, relating to guardianships and conservatorships;
(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities; or
(8) A nonprofit corporation.
(b) Acting as a fiduciary for purposes of this Code section includes but is not limited to:
(1) Accepting or executing trusts or otherwise acting as a trustee;
(2) Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, "administer" means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and
(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.
(c) Nothing in this chapter shall be construed to repeal or to change Article 15 of Chapter 12 of Title 53 or any other statutes or rules of law on such subject.

Hawaii
Haw. Rev. Stat. Ann. § 412:8-101 (West)
"Trust company" means a Hawaii financial institution which has been permitted to use the term "trust company" as part of its name, or a subsidiary, trust division or department of a bank that is a Hawaii financial institution, which engages primarily in the business of acting as a trustee, personal representative, guardian, agent, and other fiduciary, either by court appointment or by agreement.

Idaho
Idaho Code Ann. § 26-3203 (West)
(2) "Act as a fiduciary" or "acting as a fiduciary" means to:
(a) Accept or execute trusts, including to:
(i) Act as trustee under a written agreement;
(ii) Receive money or other property in its capacity as trustee for investment in real or personal property;
(iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
(iv) Act as trustee of the estate of a deceased person; or
(v) Act as trustee for a minor or incapacitated person;
(b) Administer in any other fiduciary capacity real or tangible personal property; or

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(c) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.
[…]
(30) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state including, but not limited to:
(a) Acting as a fiduciary; or
(b) To the extent not acting as a fiduciary, any of the following:
(i) Receiving for safekeeping personal property of every description;
(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or
(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.
(31) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

Idaho Code Ann. § 26-3204 (West)
(1) No person shall act as a fiduciary in this state except:
(a) A state trust company;
(b) A state bank;
(c) A savings bank organized under the laws of this state and authorized to act as a fiduciary pursuant to the savings bank act, chapter 18, title 26, Idaho Code;
(d) A national bank authorized by the comptroller of the currency to act as a fiduciary pursuant to 12 U.S.C. 92a;
(e) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
(f) An out-of-state bank with a branch in this state established or maintained pursuant to the interstate banking act, chapter 26, title 26, Idaho Code, or the interstate branching act, chapter 16, title 26, Idaho Code, or a trust office licensed by the director pursuant to this act;
(g) An out-of-state trust company with a trust office licensed by the director pursuant to this act;
(h) A foreign bank with a trust office licensed by the director pursuant to this act; or
(i) Such other person as may be authorized by the director, in his discretion, and upon such conditions as he may require.
(2) No person shall engage in an unauthorized trust activity.

Illinois
205 Ill. Comp. Stat. Ann. 620/1-5.12
"Fiduciary" means trustee, executor, administrator, receiver, guardian, assignee for the benefit of creditors, or any holder of a similar position of trust.

205 Ill. Comp. Stat. Ann. 620/1-5.13

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"Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to act as a fiduciary in this State, or the accepting or undertaking to perform the duties of a fiduciary as a significant part of its regular business.

205 Ill. Comp. Stat. Ann. 620/2-4
(b) No natural person or natural persons, firm or partnership, or corporation not having been authorized under this Act shall transact a trust business. A person who violates this Section is guilty of a Class A misdemeanor, and the Attorney General or State's Attorney of the county in which the violation occurs may restrain the violation by a complaint for injunctive relief.

Indiana

Ind. Code Ann. § 28-11-5-1 (West)
Sec. 1. This chapter applies to the following financial institutions:
(1) A bank.
(2) A savings association.
(3) A credit union.
(4) A savings bank.
(5) A trust company.
(6) A corporate fiduciary.

Ind. Code Ann. § 28-11-5-2 (West)
Sec. 2. (a) A financial institution may not be organized, incorporated, or engage in business in Indiana until the department has approved the following:
(1) The articles of incorporation of the proposed financial institution.
(2) The organization and establishment of the financial institution in the city or town in which the incorporators propose to establish the financial institution.
(b) A person who violates this section commits a Class A misdemeanor.

Ind. Code Ann. § 28-14-1-2 (West)
Sec. 2. "Acting as a fiduciary" means undertaking to act primarily for the benefit of another. The term includes the following:
(1) Acting alone and jointly with others.
(2) Acting:
(A) as a trustee;
(B) as a personal representative;
(C) as a registrar of stocks and bonds;
(D) as a guardian or conservator of estates;
(E) as an assignee;
(F) as a receiver;
(G) as a custodian;
(H) as an investment manager or agent;
(I) as a managing agent; or
(J) as in any other, similar capacity.

Ind. Code Ann. § 28-14-1-8 (West)

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Sec. 8. (a) Engaging in "the trust business" means:
(1) acting as a fiduciary for hire as one's primary business purpose; or
(2) holding oneself out to the public as being willing to act as a fiduciary for hire as one's primary business purpose.

Ind. Code Ann. § 28-1-12-1 (West)
Sec. 1. (a) Any court or officer thereof having jurisdiction to grant letters of guardianship, to appoint a trustee, guardian, receiver, or committee of the estate of any person, to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law, or to make any other fiduciary appointment contemplated and provided for in IC 28-1-11, may appoint any bank or trust company qualified under subsection (b) as such fiduciary. However, the bank or trust company is not required to accept the appointment.
(b) A bank or trust company is qualified to act as a fiduciary under subsection (a) if the bank or trust company is:
(1) organized under the provisions of IC 28;
(2) a national bank authorized to act as a fiduciary and that bank either:
(A) has its principal place of business in Indiana; or
(B) has its principal place of business in a state or territory of the United States, including the District of Columbia, that grants authority to serve in similar fiduciary capacities to banks and trust companies organized and doing business under the laws of Indiana; or
(3) organized and doing trust company business under the laws of a state or territory described in subdivision (2)(B).

Iowa
(**Note: Since 1970, Iowa has not allowed a state-chartered, stand-alone trust company; only banks can have these fiduciary powers under Iowa state law.**)

Iowa Code Ann. § 524.103 (West)
[…]
23. "Fiduciary" means an executor, administrator, guardian, conservator, receiver, trustee, or one acting in a similar capacity.

Iowa Code Ann. § 524.107 (West)
1. A person, other than a state bank which is subject to the provisions of this chapter, an out-of-state bank, and a national bank or federal savings association authorized by the laws of the United States to engage in the business of receiving money for deposit, and except as provided in subsection 2, shall not engage in this state in the business of receiving money for deposit, transact the business of banking, or establish in this state a place of business for such purpose.

2. A person doing business in this state shall not use the words "bank" or use any derivative, plural, or compound of the words "bank", "banking", or "bankers" in any manner which would tend to create the impression that the person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by this chapter or an out-of-state bank authorized to do so by the laws of another state, a national bank to the extent

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permitted by the laws of the United States, a bank holding company as defined in section 524.1801, a savings and loan holding company as defined in 12 U.S.C. § 1467a, or a federal savings association to the extent permitted by the laws of the United States.

Kansas

Kan. Stat. Ann. § 9-701 (West)

[…]

(m) "Trust business" means engaging in, or holding out to the public as willing to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment adviser, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by those persons or entities for compensation as a traditional incident to their regular business activities.

Kan. Stat. Ann. § 9-2103 (West)

(a) A trust company may exercise all powers necessary or incidental to carrying on a trust business, including, without limitation, all powers conferred upon a business corporation by the Kansas corporation code of 1972, and also may exercise the following powers:

(1) To receive for safekeeping personal property of every description;

(2) to accept and execute any trust agreement and perform any trustee duties as required by such trust agreement;

(3) to act as agent, trustee, executor, administrator, registrar of stocks and bonds, conservator, assignee, receiver, custodian, corporate trustee or attorney in fact in any agreed upon capacity;

(4) to accept and execute all trusts and to perform any fiduciary duties as may be committed or transferred to it by order, judgment or decree of any court of record of competent jurisdiction;

(5) to act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed to the letters of administration, of the estate of any deceased person;

(6) to be a conservator for any minor, incapacitated person or trustee for any convict under the appointment of any court of competent jurisdiction;

(7) to receive money in trust for investment in real or personal property of every kind and nature and to reinvest the proceeds thereof;

(8) to act in any fiduciary capacity and to perform any act as a fiduciary which a Kansas state bank may perform under any provision of the banking or insurance laws of this state, including, without limitation, acting as a successor fiduciary to any bank upon liquidation of its trust department through the transfer of its fiduciary assets pursuant to K.S.A. 9-1604, and amendments thereto, which liquidation may be effected in the manner provided in K.S.A. 9-2107, and amendments thereto, or otherwise;

Kan. Stat. Ann. § 9-2016 (West)

It shall be unlawful to transact a banking business or trust business without having first received a certificate from the commissioner. Any person violating the provisions of this section, either

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individually or as an interested party, in any association or corporation upon conviction shall be guilty of a class B, nonperson misdemeanor.

Kentucky

Ky. Rev. Stat. Ann. § 286.3-025 (West)
An institution shall not transact any business, except business which is incidental or preliminarily necessary to its organization, until it has been issued a charter under KRS 286.3-020.

Ky. Rev. Stat. Ann. § 286.3-210 (West)
Any bank or trust company organized under the laws of this state may:
(1) Be appointed and act as guardian of infants, executors, administrator or curator of estates of decedents, guardian or conservator of persons adjudged mentally disabled, receiver or trustee for persons or estates;
(2) Act as agent for the transaction of any business or the management of estates, the collection of rents, accounts, interest, dividends, notes, bonds, securities for money and debts, and demands of every character;
(3) Receive on deposit and for safekeeping, gold, silver, jewelry, money and other personal property of every kind, and shall have a lien upon all personal property deposited with it for its charge.

Louisiana

La. Stat. Ann. § 6:571
When authorized by the commissioner, a corporation may be chartered pursuant to the provisions of Chapter 3 of this Title for the purpose of becoming a trust company. The commissioner may apply the provisions of Chapter 3 of this Title, regarding state banks, and Chapters 1 and 22 of Title 12, the Business Corporations Law, and the law regarding limited liability companies, respectively, for purposes of administering and regulating the activities of trust companies and for purposes of voluntary and involuntary dissolution.

La. Stat. Ann. § 6:572
(1) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service of a fiduciary in this state or another state.
(2) "Trust company" means a corporation or a limited liability trust company organized under this Chapter, including a trust company organized under the laws of this state before June 27, 2003 or an entity chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

La. Stat. Ann. § 6:575
A. A trust company shall have all powers necessary to conduct fiduciary and trust functions. However, a trust company does not have the power to solicit, receive, or accept money or its equivalent on deposit, or to lend money, except in transactions reasonably related to and derived from its service as fiduciary.

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Maine

Me. Rev. Stat. tit. 9-B, § 313-A

1. Requirements. A corporation, limited liability company, limited partnership or limited liability partnership that has received a certificate of public convenience and advantage to conduct business as a financial institution may not commence business until the superintendent certifies in writing that the required capital has actually been paid in and that all other terms and conditions contained in the certificate of public convenience and advantage have been satisfied.

Me. Rev. Stat. tit. 9-B, § 1211

A nondepository trust company is a financial institution organized under the provisions of this Title whose activities are generally limited to trust or fiduciary matters. Unless otherwise indicated in this chapter or to the extent inconsistent with this chapter or with the general purpose of a nondepository trust company, a nondepository trust company has all the powers, duties and obligations of a financial institution under this Title.

Me. Rev. Stat. tit. 9-B, § 1214

1. General powers. A nondepository trust company has all of the powers of and is entitled to engage in the business of a financial institution, including, without limitation, powers with respect to fiduciary and trust functions and transactions except that a nondepository trust company does not have the power to solicit, receive or accept money or its equivalent on deposit as a regular business within the meaning of section 131, subsection 5 and does not have the power to lend money except in transactions reasonably related to and deriving from its service as fiduciary or its conduct of trust business.

Me. Rev. Stat. tit. 9-B, § 471

A financial institution may act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates or in any other fiduciary capacity. Assets held in any fiduciary capacity must be segregated from the general assets of the financial institution and the financial institution shall keep a separate set of books and records showing in proper detail all transactions engaged in under this section. The trust activities of financial institutions are governed by this chapter and the Probate Code.

Maryland

Md. Code Ann., Fin. Inst. § 1-101 (West)

(f) "Commercial bank" means an institution that is incorporated under the laws of this State as a State bank or trust company.

Md. Code Ann., Fin. Inst. § 3-208 (West)

A commercial bank may not do business until it receives from the Commissioner a certificate of authority to do business.

Md. Code Ann., Fin. Inst. § 3-207 (West)

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In addition to the powers set forth elsewhere in this article, a trust company may:
(1) Receive deposits of money, securities, and other personal property from any person;
(2) Act as the agent of any foreign or Maryland corporation for any lawful purpose;
(3) Act as the fiscal or transfer agent of any state, any political subdivision of any state, or any corporation;
(4) Accept and execute any trust and any powers that are conferred on or entrusted to it in any manner, including any grant, assignment, transfer, devise, or bequest by any person or by order of a court;
(5) Accept and hold trust property;
(6) Act as trustee under a mortgage or bond issue of a corporation or political subdivision;
(7) Act as personal representative of the estate of any deceased individual; and
(8) Act as guardian, receiver, or trustee of the estate of any person under order or appointment of a court and as depositary of money paid to the court for the benefit of the person.

Massachusetts

Mass. Gen. Laws Ann. ch. 203, § 4A (West)
"Trust business"--any activity conducted by an executor of a will or codicil, an administrator with the will annexed, an administrator of the estate of any person, a guardian, a conservator, or a trustee under a will or instrument creating a trust for the care and management of property, while he is acting in such a fiduciary capacity.
"Fiduciary"--as used in this section refers to any corporation, bank, trust company or individual who charges compensation for its or his services while acting in any of the capacities set forth in the paragraph defining "Trust Business", and whose gross annual compensation from all such fiduciary services is in excess of twenty-five thousand dollars for each of the three next immediate preceding taxable years.
"Trust company"--any trust company incorporated in the commonwealth and any corporation or association which acts as a corporate fiduciary or trustee within the commonwealth.

Mass. Gen. Laws Ann. ch. 167, § 37 (West)
No domestic or foreign corporation or individual, partnership or association shall conduct the business of a savings bank, co-operative bank, savings and loan association, credit union, trust company or banking company unless authorized to do so under the laws of this commonwealth…

Mass. Gen. Laws Ann. ch. 172, § 2 (West)
A trust company shall have all the powers expressly granted by law and whatever further incidental powers may fairly be implied from those expressly conferred and such as are reasonably necessary to enable it to exercise fully those powers according to common or accepted banking customs and usages.

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Michigan

Mich. Comp. Laws Ann. § 487.11105 (West)

(2) Except for acting as an escrow agent, only an individual or corporation shall act as a fiduciary in this state. A corporation acting as a fiduciary shall do so only if the corporation is 1 of the following:

(a) A bank authorized to exercise trust powers under this act, or authorized to conduct trust business in this state before November 29, 1995.

(b) A state foreign bank branch authorized to exercise trust powers under this act.

(c) An out-of-state bank, that is authorized to exercise trust powers under the law of the jurisdiction where it is organized. An out-of-state bank authorized to exercise trust powers under this subdivision may do so only to the extent a bank may exercise trust powers under this act.

(d) A national bank authorized to exercise trust powers under the national bank act.1 A national bank authorized to exercise trust powers under this subdivision may do so only to the extent that a bank may exercise trust powers under this act.

(e) A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in this state by another statute of this state.

Mich. Comp. Laws Ann. § 487.14401 (West)

(3) If the commissioner approves an application described in subsection (1), the bank or state foreign bank branch has the power to conduct a trust business. This power includes, but is not limited to, all of the following:

(a) In its corporate name, to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that are granted, committed, transferred, or conveyed to it with its consent, according to the terms of any agreement or trust, at any time, by any individual, minor, corporate body, court, or any other person and to administer, fulfill, and discharge the duties of the trust.

(b) To act as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money; to enforce the payment of any of these obligations; to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality; and to manage any sinking fund of any corporation, association, or municipality on the terms to which the parties have agreed.

(c) To accept and to execute the office of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship. If an application is made to a court for the appointment of a trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold that office. The accounts of a bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of an

estate committed to it under this section. If appointed by any court, a bank or state foreign bank branch is not required to give any security except in the discretion of the court. If the court orders the bank or state foreign bank branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state, or with personal surety or sureties on the bond satisfactory to the court.

Minnesota

Minn. Stat. Ann. § 48A.12 (West)
Subd. 29. Trust business. "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service of a trust institution.
Subd. 30. Trust company. "Trust company" means a state trust company or other company chartered to act as a fiduciary that is not a depository institution or a foreign bank.
Subd. 31. Trust institution. "Trust institution" means a bank and trust, or trust company.

Minn. Stat. Ann. § 48A.07 (West)
Subdivision 1. Qualifying organizations. A trust company, or bank that holds a certificate as provided in section 48.37, may exercise the powers and privileges set forth in this section.
Subd. 2. Taking and holding real and personal property in trust. (a) The bank or trust company may take and hold in trust any real or personal property, wherever situated, by order, judgment, or decree of a court, or by gift, grant, assignment, transfer, devise, legacy, or bequest from, or by lawful contract with, a public or private corporation or an individual or copartnership. It may manage this real or personal property upon the terms and conditions declared or imposed.
(b) The bank or trust company may act as agent for the signatures, countersignatures, registration, transfer, or redemption of certificates of stock, bonds, coupons, or other evidences of indebtedness.
(c) The bank or trust company may act as trustee under mortgages in the form of trust deeds.
(d) The bank or trust company may act as general or special agent or attorney in fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of real or personal property, in the collection of rents, payment of taxes, and generally as the representative of a person, corporation, or copartnership.
(e) The bank or trust company may guarantee the title to securities sold and transferred by it.
Subd. 3. Taking and holding deposits. The bank or trust company may take and hold on deposit or for safekeeping, money, bonds, stocks, or other securities, or personal property, that: (1) is given to it by a public officer or a trustee or other legal representative or a public or private corporation or a person; or (2) is authorized, ordered, or otherwise required by law to be deposited in a safe depository or paid into any court of record. If a court orders the deposit, and the depositor takes the receipt of the bank or trust company for it, the depositor and the depositor's sureties are relieved from liability on the deposits while they are held by the bank or trust company. With respect to trust companies only, deposits do not include checking or savings accounts, certificates of deposit, or other liabilities not relating to its fiduciary activities, except as may be authorized by sections 47.23 and 48A.04.

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Subd. 4. Accepting and performing assignments or trusts. The bank or trust company may act as assignee under an assignment for the benefit of creditors, or be appointed as a trustee, receiver, guardian, executor, or administrator, and may accept and perform any other lawful trust conferred by a court or by a corporation or individual. No oath or security is required of a bank or trust company accepting or performing a trust under this subdivision.
[…]

Minn. Stat. Ann. § 48A.22 (West)
Subdivision 1. General authority of commissioner. (a) Consistent with hearing provisions of sections 46.23 to 46.33, if the commissioner finds that:
(1) an office maintained by an out-of-state trust institution in this state is being operated in violation of the laws of this state or in an unsafe and unsound manner; or
(2) a company is engaged in an unauthorized trust activity,
the commissioner may take any enforcement action the commissioner could take if the office or the company were a state trust company including, but not limited to, issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state.
(b) The commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state according to section 48A.19, the order is effective on the date of issuance or another date the commissioner determines.

Mississippi
Miss. Code. Ann. § 81-27-1.101 (West)
(a) No company shall act as a fiduciary in this state except:
(1) A state trust company;
(2) A state bank;
(3) A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to Section 81-12-1 et seq. or Section 81-14-1 et seq.;
(4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 USCS 92a;
(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
(6) An out-of-state bank with a branch in this state established or maintained pursuant to Section 81-23-1 et seq. or a trust office licensed by the commissioner pursuant to this chapter;
(7) An out-of-state trust company with a trust office licensed by the commissioner pursuant to this chapter; or
(8) A foreign bank with a trust office licensed by the commissioner pursuant to this chapter.
(b) No company shall engage in an unauthorized trust activity.

Miss. Code. Ann. § 81-27-1.002 (West)
(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

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(A) Accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;
(B) Administer in any other fiduciary capacity real or tangible personal property; or
(C) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

Missouri

Mo. Ann. Stat. § 362.425 (West)
2. No person, association, firm or corporation, other than a corporation authorized by the laws of this state to do the business of a trust company and subject to the supervision of the director as provided by law, shall make use of the words "trust company" as part of any artificial or corporate name or title, nor make use of any sign at the place where his or its business is transacted, having thereon these words or any other words or word indicating that the place or office is the place or office of a trust company, nor make use of or circulate any written or printed, or partly printed, matter whatever having thereon these words or any other word or other words indicating that the business conducted is that of a trust company, nor transact business in such way or manner as to lead the public to believe or as in the opinion of the director might lead the public to believe that his or its business is that of a trust company, excepting banks who may be lawfully exercising trust company powers.

Mo. Ann. Stat. § 362.105 (West)
1. Every bank and trust company created under the laws of this state may for a fee or other consideration, directly or through a subsidiary company, and upon complying with any applicable licensing statute: […]
(6) Act as trustee, personal representative, or conservator or in any other like fiduciary capacity;

Mo. Ann. Stat. § 362.550 (West)
[…]
3. Any trust company may be appointed conservator, trustee, personal representative, receiver, assignee or in any other fiduciary capacity, in the manner now provided by law for appointment of individuals to any such office. On the application of any natural person acting in any such office, or on the application of any natural persons acting jointly in any such office, any trust company may be appointed by the court or officer having jurisdiction in the place and stead of the person or persons; or on the application of the person or persons any trust company may be appointed to the office to act jointly with the person or persons theretofore appointed, or appointed at the same time; provided, the appointment shall not increase the compensation to be paid the joint fiduciaries over the amount pursuant to the law payable to a fiduciary acting alone.
[…]

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5. Any investments made by any trust company of money received by it in any fiduciary capacity shall be at its sole risk, and for all losses of such money the capital stock and property of the company shall be absolutely liable, unless the investments are such as are proper when made by an individual acting in such fiduciary capacity, or such as are permitted under and by the instrument or order creating or defining the trust.

Any trust company in the exercise of its fiduciary powers as personal representative, guardian, trustee or other fiduciary capacity, may retain and continue to hold, as an investment of an estate, trust or other account administered by it as fiduciary, any shares of the capital stock, and other securities or obligations, of the trust company so acting, and of any parent company or affiliated company of such trust company, which stock, securities and obligations have been transferred to or deposited with such fiduciary by the creator or creators of such fiduciary account or other donors or grantors, or received by it in exchange for, or as dividends upon, or purchased by the exercise of subscription rights, including rights to purchase fractional shares, in respect of, any other stock, securities or obligations so transferred to or deposited with it, or which have been purchased by such fiduciary pursuant to a requirement of the instrument or order governing such account or pursuant to the direction of such person or persons other than the trust company having power to direct such fiduciary with respect to such purchases; but except as herein provided, including the exercise of subscription rights, no such trust company shall purchase as an investment for any fiduciary account, in the exercise of its own discretion, any stock or other securities or obligations, other than deposit accounts, savings certificates or certificates of deposits, issued by such trust company, or its parent or affiliated companies. This subsection shall not be construed to prohibit a trust company, in the exercise of its own discretion, from purchasing as an investment, for any fiduciary account, securities or obligations of any state or political subdivision thereof which meet investment standards which shall be established by the director of the division of finance, even though such obligations are underwritten by such trust company or its parent or affiliated companies.

[…]

12. As used in this section, the term "trust company" applies to any state or national bank or trust company qualified to act as fiduciary in this state.

Montana

Mont. Code Ann. § 32-1-102 (West)

(1) The word "bank" as used in this chapter means any corporation that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent's principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

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(4) Banks are divided into the following classes:
(a) commercial banks;
(b) savings banks;
(c) trust companies;
(d) investment companies.

Mont. Code Ann. § 32-1-107 (West)
The term "trust company" means any corporation that is incorporated under the laws of this state for any one or more of the following purposes:
(1) to receive money in trust and to accumulate the money at rates of interest as may be obtained or agreed upon or to allow interest on the money as may be agreed upon;
(2) to accept and execute all trusts and perform the duties committed to them by any person or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;
(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute the legal trusts in regard to the same on the terms as may be declared, established, or agreed upon in regard to the estate or trust;
(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;
(5) except as provided in Title 72, chapter 40, part 1, to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of the property and generally to have and exercise powers as are usually had and exercised by trust companies;
(6) except as provided in Title 72, chapter 40, part 1, to act as trustee, assignee, or receiver in all cases where it is lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;
[…]

Nebraska
Neb. Rev. Stat. Ann. § 8-201 (West)
It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section 30-3820, to engage in business as a trust company or to act in any other fiduciary capacity unless it has first obtained from the Department of Banking and Finance a charter of authority to do business.

Neb. Rev. Stat. Ann. § 8-206 (West)

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A trust company created under the Nebraska Trust Company Act shall have power:
(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;
(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;
(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;
(4) To act as attorney in fact for any person or corporation, public or private;
(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;
(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;
[…]

Nevada

Nev. Rev. Stat. Ann. § 669.010 (West)
The Legislature finds as facts and determines that:
1. There exists in this State a need, for the protection of the public interest, to regulate companies which are engaged in the trust company business.
2. Such trust companies should be licensed and regulated in such manner as to promote the public advantage and convenience.
3. It is the purpose of this chapter to bring under public supervision those persons who are engaged in or who desire to engage in the business of a trust company, not in connection with banking business, and to insure that there is established in this State an adequate, efficient and competitive trust company service.

Nev. Rev. Stat. Ann. § 669.029 (West)
"Business of a trust company" or "trust company business" means the holding out by a person, by advertising, solicitation or other means, that it is available to act as a fiduciary in this state and undertaking to act as a fiduciary in the regular course of its business.

Nev. Rev. Stat. Ann. § 669.045 (West)
1. "Fiduciary" means a trustee, executor, administrator, guardian of an estate, personal representative, conservator, assignee for the benefit of creditors, receiver, depositary or person that receives on deposit money or property from a public administrator or a person employed or contracted with pursuant to NRS 253.125, as applicable, under any provision of this chapter or from another fiduciary.

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New Hampshire

N.H. Rev. Stat. Ann. § 383-C:3-301

Consistent with a business plan and capital plan approved by the commissioner and for so long as it is authorized to transact business in this state and holds a valid charter as a trust company, a trust company shall have power:

(a) To execute all the powers and possess all the privileges conferred on state banks, other than the power to accept deposits;

(b) To be appointed and to act as trustee, trust advisor, or trust protector of any trust or as executor of any estate;

(c) To be appointed and to act as receiver, assignee, or agent for any person or entity;

(d) To act as fiscal or transfer agent of the United States or any other person or entity and, in that capacity, to receive and disburse money;

(e) To transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness and to act as attorney-in-fact or agent of any entity for any purpose, statutory or otherwise;

(f) To act as trustee under any mortgage, bonds, or debentures issued by any person, and to accept and execute any municipal or corporate trust;

(g) To receive and manage any sinking fund of any entity upon those terms as may be agreed upon between the entity and those dealing with, or having an interest in, the sinking fund;

(h) To collect coupons on, or interest upon, all manner of securities, when authorized so to do, by the parties depositing the securities;

(i) To accept trusts from and execute trusts for married persons in respect of the separate property of the married persons, to be their individual or joint agent in the management of the property, and to transact any business in relation to the property;

(j) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court; to act as assignee under any assignment for the benefit of creditors of any debtor, whether made under statute or otherwise, and to be the custodian of any moneys or assets paid into court;

(k) To be appointed and to act under the order or appointment of any court of competent jurisdiction or otherwise (i) as guardian, receiver, trustee, committee, or conservator of the estate of any minor, any person deemed by law to be incompetent to manage his or her affairs, or any other conservatee, or in any other fiduciary capacity, or (ii) as receiver, trustee, or committee of the property or estate of any person in insolvency or bankruptcy proceedings; but this power shall not be construed to deprive any other person of any legal right to have issued to the person a letter of guardianship or of administration;

(l) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person;

(m) To act in a fiduciary capacity, including (i) to take, and accept, and execute any and all trusts, duties, or powers of whatever nature or description that may be conferred upon or entrusted or committed to the trust company by any person; (ii) to exercise any other authority, trust, or power conferred upon or entrusted or committed to the trust company by grant, assignment, transfer, devise, bequest, or otherwise; (iii) to exercise any power or authority that

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may be granted to the trust company by order of any court of competent jurisdiction or any surrogate; and (iv) to receive, take, use, manage, hold, and dispose of, according to the terms of any trust, duty, or powers any property or estate, real or personal, that is the subject of the trust, duty, or power;
[…]

New Jersey
N.J. Stat. Ann. § 17:9A-2 (West)
A. No corporation, other than a national banking association, shall hereafter be organized to transact the business of a bank or savings bank in this State, except as provided in this act.

N.J. Stat. Ann. § 17:9A-1 (West)
(1) "Bank" shall include the following:
(a) Every corporation heretofore organized pursuant to the act entitled "An act concerning banks and banking (Revision of 1899)," approved March 24, 1899;1
(b) Every corporation heretofore organized pursuant to the act entitled "An act concerning trust companies (Revision of 1899)," approved March 24, 1899;
(c) Every corporation heretofore organized pursuant to chapter 4 of Title 17 of the Revised Statutes;
(d) Every corporation, other than a savings bank, heretofore authorized by any general or special law of this State to transact business as a bank or as a trust company, or as both;
[…]
(8) "Fiduciary" shall include trustee, executor, administrator, receiver, guardian, assignee, and every other person occupying any other lawful office or employment of trust
[…]
(28) "Trust office" means an office, unit, station, facility, or space at a fixed location, other than a principal office, however designated, at which business that may be conducted at the principal office may be transacted and the primary activities conducted include the transaction of trust business as defined in paragraph (2) of subsection D of section 316 of P.L.1948, c. 67 (C.17:9A-316), but at which no deposits may be taken other than assets to be held in trust.

N.J. Stat. Ann. § 17:9A-316 (West)
(2) For the purposes of this section, "trust business" means holding out to the public by advertising, solicitation or other means that a person or entity is available to perform any of the services of a trustee or fiduciary in this State or another state, and includes acting as a trustee, testamentary trustee, fiduciary, executor or guardian or exercising any of the powers specified in paragraphs (3) through (9) of section 28 of P.L.1948, c. 67 (C.17:9A-28).

New Mexico
N.M. Stat. Ann. § 58-9-4 (West)
A. No person, legal entity or corporation shall engage in the trust business without first obtaining a certificate from the director; provided, however, that a bank having its principal office in this state or an out-of-state bank not having an established office in this state otherwise authorized

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under state or federal laws to engage in the trust business or a savings and loan association having its principal office in this state acting as trustee or custodian pursuant to Section 58-10-35 NMSA 1978 may engage in trust business to the extent permitted in that section without obtaining a certificate under the Trust Company Act.
B. A trust company shall conduct such business in compliance with all state and federal laws, and all rules promulgated pursuant to those laws, including the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act and the Uniform Trust Code.
C. A trust company shall keep all trust funds and investments separate and apart from the assets of the trust company, and all investments made by the trust company as a fiduciary shall be designated so that the trust or estate to which such investment belongs is clearly identified.

N.M. Stat. Ann. § 58-9-2 (West)
As used in the Trust Company Act:
A. "director" means the director of the financial institutions division of the regulation and licensing department;
B. "trust business" means the holding out by a person, legal entity or corporation to the public at large by advertising, solicitation or other means that the person, legal entity or corporation is available to act as a fiduciary in this state or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business;
C. "trust company" means a corporation holding a certificate issued pursuant to the Trust Company Act;
D. "certificate" means a certificate of authority issued pursuant to the Trust Company Act to engage in trust business;
E. "fiduciary" means executor, administrator, conservator or trustee;
F. "nonprofit corporation" means a nonprofit corporation as defined in the Nonprofit Corporation Act that was formed and is operating a pooled trust in compliance with the requirements of 42 U.S.C. 1396p(d)(4) to provide trust services for individuals who are disabled, and the nonprofit corporation is not otherwise engaged in the trust business. As used in this subsection, "disabled" has the meaning set forth in 42 U.S.C. 1382c(a)(3); and
G. "division" means the financial institutions division of the regulation and licensing department.

New York
N.Y. Banking Law § 669 (McKinney)
Any person not authorized by the superintendent of financial services, who:
1. Uses an office sign at the place where his business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company; or,
2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank or trust company.

Is guilty of a misdemeanor; provided, however, that nothing in this section shall be deemed to prevent a bank holding company from using any corporate name it is duly authorized to use under subdivision (b) of section three hundred two of the business corporation law.

N.Y. Banking Law § 2 (McKinney)
2. Trust company. The term, "trust company," when used in this chapter, unless a different meaning appears from the context, means any corporation or limited liability trust company organized under or subject to the provisions of article three of this chapter, having, in addition to the other powers specified in such article, the fiduciary powers specified therein. The definitions set forth in section two-b of this article shall be utilized when the provisions of this chapter are applied to the formation and operation of limited liability trust companies.

N.Y. Banking Law § 100-a (McKinney)
1. Executor. When any trust company is appointed executor in any last will and testament, the court or officer authorized to grant letters testamentary in this state, shall, upon the proper application, grant letters testamentary thereon to such trust company or to its successors by merger.
2. Guardian, trustee or administrator.
(a) Any trust company may be appointed guardian, trustee or administrator, on the application or consent of any person acting as such or as an executor or entitled to such appointment
[…]
(c) Any court or officer having authority to grant letters of guardianship of any infant may upon the same application as is required by law for the appointment of a guardian for such infant, appoint any trust company as the guardian of the estate of such infant.
3. Committee of incompetent or conservator of a conservatee.
Any court having jurisdiction to appoint a trustee, guardian, receiver, committee of the estate of a person with a mental disability, or conservator of the estate of a conservatee, or to make any fiduciary appointment, may appoint any trust company to be such trustee, guardian, receiver, committee or conservator, or to act in any other fiduciary capacity.
4. Receiver, trustee or committee. Any court, having jurisdiction to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings or in any other proceeding, or action, under state or federal law, may appoint any trust company to be such receiver, trustee or committee.
[…]

North Carolina
N.C. Gen. Stat. Ann. § 53-301
(2) "Act as a fiduciary" means:
a. To (i) act as trustee under a written instrument or by judicial appointment or order; (ii) receive money or other property as trustee for investment or reinvestment in real or personal property; (iii) act as custodian or custodial trustee under a gifts to minors act, a transfers to minors act, a custodial trust act, or similar statute; (iv) act as personal representative of the estate of a deceased person; (v) act as trustee, guardian, or conservator for the person or estate of an incompetent such as a minor or incapacitated person, or in other circumstances in which a guardian may be

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appointed; or (vi) act in a capacity similar to one listed in (i) through (v), however such capacity may be designated under applicable law or governing instrument; or
b. To possess, purchase, sell, safekeep, or otherwise manage or administer property in any other fiduciary capacity.
[…]
(50)"Trust business" means acting as a fiduciary or in other capacities permissible for a trust institution under G.S. 53-331.

N.C. Gen. Stat. Ann. § 53-331
(a) Subject to the other provisions of this Part, one or more persons may organize and charter a State trust company, which may be established in the manner described in this Part and in no other way.
(b) Subject to G.S. 53-313 and G.S. 53-336(b) and other applicable provisions of State and federal law, a State trust company may:
(1) Act as a fiduciary within or outside this State;
(2) Act within or outside this State as agent, advisory agent, assignee, assignee for the benefit of creditors, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment adviser, investment manager, managing agent, purchase agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent, warrant agent, or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons;
(3) Engage in trust marketing within this State; and
(4) Exercise the powers of a business corporation organized under North Carolina law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted fiduciary customs and usages, a power conferred in this Article.
N.C. Gen. Stat. Ann. § 53-336
(a) A proposed State trust company shall not be incorporated or engage in trust business or trust marketing until it receives a charter issued by the Commissioner.

North Dakota
N.D. Cent. Code Ann. § 6-05-02 (West)
No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, state banks or trust companies authorized to engage in trust activities under the laws of another state, their affiliates, bona fide banking institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as “trust”, “trust company”, or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. …

N.D. Cent. Code Ann. § 6-05-08 (West)
A corporation, when qualified as provided by section 6-05-04, may:

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1. Acquire, lease, purchase, own, hold, use, improve, mortgage, sell, and convey such real estate and personal property as may be necessary for the convenient transaction of its business. It may acquire real estate by foreclosure or upon compromise or settlement of prior mortgages held by it either as absolute owner or as trustee and may dispose of the same. No part of the capital, deposits, trust funds, or property owned or held by it, in trust or otherwise, may be invested in real estate except as herein authorized, unless the investment is made under and by virtue of a particular contract, or instrument, or order, judgment, or decree of court, which confers a special power or authority so to do, and then only with, or to the extent of, the moneys or funds thereby provided and belonging to such particular trust. Such corporation is authorized to purchase notes, bonds, mortgages, and other evidences of indebtedness, and other securities, subject to the limitations imposed upon banking associations as to investments, and to convert the same into cash and other securities.
2. Act as trustee under will, agreement, court order, or otherwise, and act as fiscal agent and transfer agent.
3. Take, accept, and hold on deposit for savings account or for safekeeping, or in escrow, or for investment, any and all moneys, bonds, stocks, and other securities, or personal property whatsoever. When any savings deposit has been received from a minor, the repayment of the deposit to the minor or the minor's order is a complete discharge of such corporation from any further liability therefor. Whenever any officer or person, public or private, or any fiduciary, is authorized to pay into or deposit in any court any moneys, securities, or personal property whatsoever, the same instead of being deposited with or paid into court may be paid into or deposited with any corporation organized and acting under this chapter which may be designated for that purpose by the court having jurisdiction of the subject matter, or by the person owning or controlling such property. Whenever any fiduciary deposits any moneys, securities, or any personal property whatsoever, belonging to the fiduciary's trust, with any corporation qualified and acting under this chapter and takes a receipt of such corporation therefor, the fiduciary and the fiduciary's sureties thereafter are relieved from all liability therefor until the same again shall be delivered to the fiduciary by such corporation.
4. Act as assignee, receiver, administrator, executor, guardian, or conservator.
5. Provide by its bylaws and regulations for the payment of interest or dividends, for the investment of moneys, and conditions for repaying or withdrawing the same. It may borrow money upon the security of its own property or credit.
6. Act as agent and attorney in fact in all respects as a natural person could do.
7. Make, compile, and certify abstracts of title of real estate upon the conditions prescribed by the laws of this state relating to abstracters to ensure the validity and genuineness of titles to real property.
8. Notwithstanding any other provision of law and subject to approval by the state banking board, engage in any fiduciary activity in which a federally chartered financial institution that is granted fiduciary powers may engage.

Ohio

Ohio Rev. Code Ann. § 1111.02 (West)
(A) Except as provided in division (B) of this section, no person shall solicit or engage in trust business in this state except a corporation that is one of the following:
(1) A corporation licensed under section 1111.06 of the Revised Code that is one of the following:

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(a) A state bank;
(b) A bank authorized to accept and execute trusts and doing business under authority granted by the bank chartering authority of another state or country;
(c) A corporation organized under the laws of another state or country and authorized to accept and execute trusts in that state or country.
(2) A national bank or federal savings association authorized to accept and execute trusts and doing business under authority granted by the office of the comptroller of the currency.

Ohio Rev. Code Ann. § 1111.01 (West)
(I) "Trust business" means accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business. "Trust business" does not include any of the following:
(1) Any natural person acting as a trustee, executor, administrator, guardian, receiver, or conservator pursuant to appointment by a court of competent jurisdiction;
(2) Any natural person serving as a trustee who does not hold self out to the public as willing to act as a trustee for hire. For purposes of division (I) of this section, the solicitation or advertisement of legal or accounting services by a person licensed in this state as an attorney or a person holding an Ohio permit to practice public accounting issued under division (A) of section 4701.10 of the Revised Code shall not be considered to be the act of holding self out to the public as willing to act as a trustee for hire.
(3) A charity, an officer or employee of a charity, or a person affiliated with a charity, serving as trustee of a charitable trust of which the charity, or another charity with a similar purpose, is a beneficiary;
(4) Any natural person, home, or residential facility serving as trustee or taking other actions relative to a qualified income trust described in section 1917(d)(4)(B) of the "Social Security Act," 42 U.S.C. 1396p(d)(4)(B), as amended;
(5) Other fiduciary activities the superintendent determines are not undertaken as a business.

Oklahoma
Okla. Stat. Ann. tit. 6, § 104 (West)
A. The certificates, permits and charters of state banks and trust companies heretofore organized under the laws of the state and existing before August 31, 1965, shall continue in full force and effect. All such state banks and trust companies, and, to the extent applicable, all national banks now or hereafter doing business in this state, shall from August 31, 1965, be subject to the provisions and requirements of this Code1 in every particular as if organized under this act.2
B. Any bank, bank holding company, trust company or business association not holding a charter of authority to engage in banking or trust company business in this state shall register with the Commissioner, on a form provided by the Commissioner and pay a registration fee in an amount set by rule of the Board, all bank or trust-related activities conducted in this state by the bank, bank holding company, trust company, business association, or any subsidiary or affiliate thereof.
C. Bank or trust-related activities include receiving deposits, transaction accounts, making loans, issuing debentures or other evidence of debt, holding funds or other property in trust, acting in a fiduciary capacity, or conducting in any other manner banking, or bank or trust-related activities.

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Okla. Stat. Ann. tit. 6, § 1001 (West)
All corporate trust companies now existing or hereafter created shall have the power to:
1. Receive deposits of trust moneys; to receive upon deposit for safekeeping personal property of every description; to guarantee special deposits; and to own or control safety vaults and rent the boxes therein;
2. Accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be committed or transferred to them by order, judgment or decree of any of the courts of record of this state or of any state or of the United States;
3. Take, accept and hold by the order, judgment or decree of any court of this state, or of any state or territory of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all such legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest, and to execute as principal or surety, and to guarantee against loss any principal or surety upon any bond or bonds required by law to be given in any proceeding in law or equity in any of the courts of this state or of any state or of the United States;
4. Act as agent or attorney-in-fact for any person or corporation in the management and control of real or personal property and the sale or conveyance of the same, and for the investment of money, and to act for and represent corporations or persons under power and letters of attorney, and as agents for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state or public authority, on such terms as may be agreed upon;
5. Accept from and execute trusts for any married persons in respect to their separate property, whether real or personal, and act as agent for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies;
6. Act as executor under last will or at the instance of any person entitled to any administration or guardianship of any estate, as administrator of the estate of any deceased person, or as guardian or curator of any minor, or any incapacitated or partially incapacitated person, as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes, or trustee for any convict in the penitentiary under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, minor, or incapacitated or partially incapacitated person;
[…]
10. Act as fiscal agent of the United States, or any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, credits, securities and effects;
11. Act as trustee under trusts created by will or by declaration of trust;
12. Act as guardian for any number of persons;
[…]

Oregon
Or. Rev. Stat. Ann. § 709.005 (West)
(1) Except as provided in ORS 709.030 (4) or in subsection (4) of this section, no company shall transact any trust business in this state until the company has obtained a certificate of authority

from the Director of the Department of Consumer and Business Services under this section, authorizing the company to transact trust business in this state.

Or. Rev. Stat. Ann. § 709.150 (West)
A trust company may:
(1) Act as a fiscal or transfer agent of the United States or of any state, county, municipality, political subdivision or corporation, and in that capacity:
(a) Receive and disburse money;
(b) Transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness;
(c) Authenticate and certify bonds and certificates of indebtedness; and
(d) Act as attorney-in-fact or agent of a person for any lawful purpose.
(2) Lease, hold, purchase and convey any real property necessary or convenient in transacting trust business.
(3) Receive deposits of moneys, securities and other personal property in trust from any person and loan trust funds that are secured by real or personal property.
(4) Act as trustee under any mortgage or bonds and accept and execute any lawful municipal or corporate trusts.
(5) Be appointed by a court and act as a fiduciary.
(6) Accept and execute any lawful trust.
(7) Rent receptacles for safe deposits of personal property and receive personal property upon deposit for safekeeping.
(8) Purchase, invest in and sell bills of exchange, bonds and mortgages, and other evidences of indebtedness.
(9) Discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt in managing trust properties, accept for payment at a future date drafts drawn upon the trust company and issue letters of credit authorizing holders to draw drafts upon the trust company or the trust company's correspondents at sight or on time, not exceeding one year.
(10) Exercise all other powers given to trust companies under the Bank Act.

Pennsylvania
7 Pa. Stat. Ann. § 401 (West)
This chapter shall apply to, and the word "institution" in this chapter shall mean, a bank and trust company, an interstate bank which has fiduciary powers under its law of incorporation, a trust company and a savings bank that has fiduciary powers, except that section 4071 shall apply only to a trust company. The powers conferred by this chapter on a bank and trust company or savings bank that has fiduciary powers shall be independent of, and shall not expand, the banking powers of such an institution.

7 Pa. Stat. Ann. § 402 (West)
(a) An institution may act, alone or with others, as:
(i) fiduciary,
(ii) investment advisor,
(iii) custodian of property,
(iv) agent or attorney-in-fact,
(v) registrar or transfer agent of securities,

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(vi) fiscal agent of the United States, a state or a political subdivision thereof, a public body, a corporation or an individual,
(vii) treasurer of a political subdivision or public body or of a nonprofit corporation, and
(viii) insurer of titles to, mortgages on and other interests in real estate--if the institution qualifies under the provisions of section 406.

7 Pa. Stat. Ann. § 102 (West)
(p) "Fiduciary"--an executor, administrator, guardian, receiver, trustee, assignee for the benefit of creditors or one acting in a similar capacity.
[…]
(dd) "Trust company"--a corporation which exists under the laws of this Commonwealth and was authorized to act as fiduciary on the effective date of this act as a trust company under the Banking Code of 1933, or which receives authority to act as fiduciary pursuant to this act, but which is not authorized to engage in the business of receiving deposits.

Rhode Island
19 R.I. Gen. Laws Ann. § 19-1-1 (West)
(7) "Financial institution" means any entity, other than a credit union, duly organized under the laws of this state that has the statutory authority to accept money on deposit pursuant to title 19, including an entity that is prohibited from accepting deposits by its own bylaws or agreement to form; the term includes, but is not limited to banks, trust companies, savings banks, loan and investment banks, and savings and loan associations.

19 R.I. Gen. Laws Ann. § 19-3.1-1 (West)
The provisions of this chapter shall apply to any financial institution:
(1) Authorized by its agreement to form to exercise trust powers;
(2) Permitted to exercise such powers by laws of this state applicable to that financial institution on or before December 31, 1994; and
(3) To any bank or trust company duly organized under the laws of and carrying on business in another state that has established a trust branch office in this state subject to the provisions of § 19-3.1-6.

19 R.I. Gen. Laws Ann. § 19-3.1-3 (West)
A financial institution subject to this chapter shall also have power to accept and execute all of these trusts, and to hold in trust all property, of every description, as may be committed to it by any person or persons, or by any corporation, or by any court of this state or of the United States; and also to accept and execute the office and appointment of executors, administrators, custodians, conservators, guardians of estates, assignees, or receivers of any kind or nature whatever, whether that office or appointment be conferred or made by any person or persons, or by any court of probate or other court; and any court of probate in this state is hereby empowered, in its discretion, to appoint the financial institution as executor, administrator, custodian, conservator and guardian of the estate of any person within its jurisdiction, subject however, to the provisions of § 33-8-8, and provided, that the financial institution may, upon the petition of the surviving spouse, be appointed administrator or custodian upon the estate of a spouse dying intestate; provided, further, that the financial institution shall not be authorized to

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act in any of the foregoing offices until its acceptance in writing of the appointment shall be filed and recorded in the probate court in which the appointment shall be made.

South Carolina

S.C. Code Ann. § 34-21-10

No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. … Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

S.C. Code Ann. § 34-21-210

The following terms used in this article shall have the meanings ascribed to them in this section unless the context indicates otherwise:

(1) "Trust institution" means any state bank, any national bank, any building and loan association, savings association, savings and loan association, savings bank, or any trust company authorized to conduct a trust business in this State, or any trust company, authorized to act in a fiduciary capacity in this State, and under the supervision of the Comptroller of the Currency of the United States, or the Federal Reserve System, or the State Board of Bank Control of South Carolina;

(2) The term "fiduciary" means a trust institution undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent;

South Dakota

S.D. Codified Laws § 51A-6A-1

(7) "Fiduciary for hire," acting as an administrator, conservator, custodian, executor, guardian, personal representative, or trustee, for any person, trust, or estate for compensation or gain or in anticipation of compensation or gain;

[…]

(13) "Trust company," a nondepository trust company incorporated or organized under the laws of this state engaged in the trust company business;

(14) "Trust company business," engaging in, or representing or offering to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment advisor, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company, or real estate escrow company may be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities. Trust company business as defined in this chapter does not constitute banking as defined in subdivision 51A-1-2(4);

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S.D. Codified Laws § 51A-6A-4
No trust company may be incorporated or organized under the laws of this state or transact trust company business in this state until the application for its incorporation or organization and application or authority to do business and the location of its principal office have been submitted to and approved under the same procedure for bank applications as provided in § 51A-2-16, except that conditions for considering an application involving a trust company shall be as set forth in § 51A-6A-5. The director shall prescribe the form for making an application and any application submitted shall contain such information as required. The applicant may, with approval of the director, designate confidential information. Any costs associated with the public notice required in § 51A-2-16 shall be paid by the applicant, in addition to the application fee required in § 51A-6A-6.

Tennessee
Tenn. Code Ann. § 45-2-1001 (West)
(a) No company shall act as a fiduciary in this state except:
(1) A state trust company;
(2) A state bank authorized to act as a fiduciary; […]

Tenn. Code Ann. § 35-2-102 (West)
(2) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, personal representative, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate;

Texas
Tex. Fin. Code Ann. § 181.004 (West)
(a) A person or company may not use in a business name or advertising the words "trust," "trust company," or any similar term or phrase, any word pronounced "trust" or "trust company," any foreign word that means "trust" or "trust company," or any term that tends to imply that the business is holding out to the public that it engages in the business of a fiduciary for hire unless the banking commissioner has approved the use in writing after finding that the use will not be misleading. This subsection does not prohibit an individual from engaging in the business of a fiduciary for compensation or from using the words "trust" or "trustee" for the purpose of identifying assets held or actions taken in an existing capacity.
(b) Subsection (a) does not apply to:
(1) a trust institution authorized under this subtitle to conduct a trust business in this state; or
(2) another entity organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that:
(A) the entity is authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a); and

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(B) the entity is authorized by the laws of this state or the United States to conduct the activities in which the entity is engaged in this state.

Tex. Fin. Code Ann. § 181.002 (West)
(1) "Account" means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust institution acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar, or agent.
[…]
(49) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:
(A) the business of a trustee or custodian of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986; and
(B) the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who makes the administrator's or servicer's services available to the public for hire or compensation.

Tex. Fin. Code Ann. § 182.001 (West)
(b) A state trust company may engage in the trust business by:
(1) acting as trustee under a written agreement;
(2) receiving money and other property in its capacity as trustee for investment in real or personal property;
(3) acting as trustee and performing the fiduciary duties committed or transferred to it by order of a court;
(4) acting as executor, administrator, or trustee of the estate of a deceased person;
(5) acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person;
(6) acting as a successor fiduciary to a trust institution or other fiduciary;
(7) receiving for safekeeping personal property;
(8) acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver;
(9) acting as investment advisor, agent, or attorney in fact according to an applicable agreement;
(10) with the prior written approval of the banking commissioner and to the extent consistent with applicable fiduciary principles, engaging in a financial activity or an activity incidental or complementary to a financial activity, directly or through a subsidiary;
(11) exercising additional powers expressly conferred by rule of the finance commission; and
(12) exercising any incidental power that is reasonably necessary to enable it to fully exercise the powers expressly conferred according to commonly accepted fiduciary customs and usages.

Utah
Utah Code Ann. § 7-5-1 (West)
(b) "Trust business" means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under appointment as trustee for any purpose permitted by law, including the definition of "trust" set forth in Subsection 75-1-201(55).

Utah Code Ann. § 7-5-1 (West)

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(2) Only a trust company may engage in the trust business in this state.

Vermont

Vt. Stat. Ann. tit. 8, § 14403 (West)
No financial institution not otherwise expressly authorized by its respective supervisory agency under state or federal law may exercise the powers provided in this subchapter until it has applied for and obtained approval of the Commissioner to do so under subsection 11701(b) of this title. The Commissioner shall conduct inquiry into the affairs of the financial institution applying for those powers to determine if the financial institution is staffed, equipped, and able to furnish those services.

Vt. Stat. Ann. tit. 8, § 2401 (West)
(1) "Act as fiduciary" or "acting as a fiduciary" means to:
(A) accept or execute trusts, including to:
(i) act as trustee under a written agreement;
(ii) receive money or other property in its capacity as trustee for investment in real or personal property;
(iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
(iv) act as trustee of the estate of a deceased person; or
(v) act as trustee for a minor or incapacitated person;
(B) administer in any other fiduciary capacity real or tangible personal property; or
(C) act pursuant to order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.
[…]
(4) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to act as a fiduciary in this or another state for hire or compensation.

Virginia

Va. Code Ann. § 6.2-1000 (West)
"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.
[…]
"Trust company" means a corporation, including an affiliated trust company, that is authorized to engage in the trust business under Article 2 (§ 6.2-1013 et seq.) of this chapter, the powers of which are expressly restricted to the conduct of trust business.
[…]

Va. Code Ann. § 6.2-1013 (West)
[…]

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"Fiduciary" means executor, administrator, conservator, guardian of a minor, committee, or trustee.
[…]

Va. Code Ann. § 6.2-1014 (West)
No person shall engage in the trust business without first obtaining a certificate of authority from the Commission; however, a bank or savings institution authorized under state or federal laws to engage in the trust business or a trust subsidiary, including a national bank or federal savings bank described in clause (ii) of subsection B of § 6.2-1067, may engage in such business to the extent permitted by law without obtaining a certificate under this article….

Washington
Wash. Rev. Code Ann. § 30B.04.005 (West)
(44) "Trust business" means the performance of, or holding out by, a person to the public by advertisement, solicitation, or other means that the person is available to perform one or more of the essential functions of trust business set forth in RCW 30B.08.080(1).
(45) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

Wash. Rev. Code Ann. § 30B.08.080 (West)
(1) Upon the issuance of a certificate of authority to a state trust company as prescribed in this chapter and its commencement of business pursuant to such certificate of authority, it shall be a corporation or limited liability company for the purpose of engaging in trust business under this title, including:
(a) Accepting or executing trusts, including:
(i) Acting as trustee under a written agreement;
(ii) Receiving money or other property in its capacity as trustee for investment in real or personal property;
(iii) Acting as trustee and performing the fiduciary duties committed or transferred to it by a valid and applicable court order;
(iv) Acting as trustee of the estate of a deceased person;
(v) Acting as trustee for a minor or incapacitated person;
(vi) Acting as a trustee of collective investment funds or common trust funds; or
(vii) Acting as a trustee of statutory or similar trusts;
(b) Acting as an attorney-in-fact in any agreed upon capacity;
(c) Acting pursuant to court order as executor, administrator, guardian, or conservator of an estate; or
(d) Regularly engaging in any other activity that the director determines by rule to be an essential function of a trust business in Washington state upon his or her finding that (i) the proposed activity of the applicant is closely akin to acting as a fiduciary, (ii) the proposed activity cannot be more effectively regulated under a statute of Washington state other than this title, and (iii) the exercise of such powers by the applicant in Washington state (A) would serve the convenience and advantage of trustors and beneficiaries, or the general public, and (B) would maintain the fairness of competition and parity between state trust companies and, as applicable, federal trust institutions or out-of-state trust institutions.

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West Virginia

W. Va. Code Ann. § 31A-1-2 (West)

(c) The words "bank" and "banking institution" mean a corporation, limited liability company or association heretofore or hereafter charted to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. § 1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

[…]

(t) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

W. Va. Code Ann. § 31A-4-14 (West)

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, has and may exercise the following powers:

(1) All the powers, rights and privileges of any state banking institution;

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating the fund;

[…]

Wisconsin

Wis. Stat. Ann. § 223.10 (West)

Except as provided in s. 54.15(7), no court or probate registrar in this state may appoint or issue letters to any corporation, limited liability company, association, partnership or business trust as trustee, personal representative, guardian, conservator, assignee, receiver, or in any other fiduciary capacity unless such corporation, limited liability company, association, partnership or business trust is subject to regulation and examination under s. 223.105, or is a national bank, state or federal savings and loan association, state or federal savings bank or federal credit union with authority to exercise such powers, or is a foreign corporation operating under s. 223.12.

Wis. Stat. Ann. § 223.105 (West)

(1) Definitions. In this section:

(a) "Fiduciary operation" means any action taken by an organization acting as a trustee or in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state.

(b) “Organization” means any corporation, unincorporated cooperative association, limited liability company, association, partnership or business trust, other than a national bank, state or federal savings and loan association, state or federal savings bank or federal credit union or other than a corporation, limited liability company, association or partnership, all of whose shareholders or members are licensed under SCR 40.02.
(c) “Trustee” has the meaning designated in s. 701.0103(28).
(2) Organizations subject to rules and examination. Any organization which holds itself out to residents of this state as available to act, for compensation, as trustee or which seeks or consents to serve in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state is subject to:
(a) Such rules as may be established by the division under s. 220.04(7); and
(b) Periodic examination of its fiduciary operations as provided under sub. (3).

Wyoming
Wyo. Stat. Ann. § 13-5-301 (West)
(xvi) “Trust company” means a corporation or limited liability company that is incorporated or organized in this state or a foreign corporation or limited liability company that is qualified to do business in this state and that is engaged in trust company business;
[…]
(ix) “Fiduciary” means acting as executor, administrator, guardian or conservator of an estate or as an assignee, receiver or trustee or acting in any other fiduciary or representative capacity;
[…]
(xviii) “Trust company business” means the holding out by a person, by advertising, solicitation or other means, that such person is available to act as a fiduciary in this state and accepting and undertaking to act as a fiduciary in the regular course of its business…

Wyo. Stat. Ann. § 13-5-508 (West)
If the application is approved and a charter granted by the board, the public trust company shall not commence business before receiving a certificate of authority to operate from the commissioner.

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GFS AND CDM ANSWERS TO REQUESTS FOR ADMISSIONS AND ATTACHMENTS

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2020-CP-22-0882 **DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT**

Defendants CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (together, "Defendants"), hereby answers Requests to Admit propounded by the Plaintiff South Carolina Board of Financial Institutions ("Plaintiff") pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure as follows:

1. Admit that neither CDM Corporation, Inc., or Guardian Fiduciary Services, LLC, are a national banking association or a natural person.

RESPONSE: Admit.

2. Admit that neither CDM Corporation, Inc., or Guardian Fiduciary Services, LLC, were actively engaged in conducting a trust business in South Carolina on January 1, 1972.

RESPONSE: Admit.

3. Admit that CDM Corporation, Inc., has never made a written application to the South Carolina Board of Financial Institutions to conduct trust business of any kind in the State of South Carolina.

RESPONSE: CDM admits only that it has never made a *written* application to the South Carolina Board of Financial Institutions. However, as set forth in CDM's counterclaim,

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Stephen Mantell contacted the Office of the South Carolina Commissioner of Banking to inquire whether his companies, CDM and Guardian, were permitted to serve in the role of trustee under South Carolina law. He explained the activities of his companies, and was told by the Office that, because CDM and Guardian would not be managing investments on behalf of trusts, they need not complete an application to perform the services of a trust business. The Office did not provide a written opinion.

4. Admit that Guardian Fiduciary Services, LLC, has never made a written application tothe South Carolina Board of Financial Institutions to conduct trust business of any kind in the State of South Carolina.

RESPONSE: Guardian admits only that it has never made a *written* application to the South Carolina Board of Financial Institutions. However, as set forth in CDM's counterclaim, Stephen Mantell contacted the Office of the South Carolina Commissioner of Banking to inquire whether his companies, CDM and Guardian, were permitted to serve in the role of trustee under South Carolina law. He explained the activities of his companies, and was told by the Office that, because CDM and Guardian would not be managing investments on behalf of trusts, they need not complete an application to perform the services of a trust business. The Office did not provide a written opinion.

5. Admit that CDM Corporation, Inc., has never been given written permission by the South Carolina Board of Financial Institutions to conduct trust business of any kind in the State of South Carolina.

RESPONSE: CDM admits only that it has never been given *written* permission by the South Carolina Board of Financial Institutions. It was, however, given oral permission by the Banking Commissioner. As set forth in CDM's counterclaim, Stephen Mantell

contacted the Office of the South Carolina Commissioner of Banking to inquire whether his companies, CDM and Guardian, were permitted to serve in the role of trustee under South Carolina law. He explained the activities of his companies, and was told by the Office that, because CDM and Guardian would not be managing investments on behalf of trusts, they need not complete an application to perform the services of a trust business. The Office did not provide a written opinion.

6. Admit that Guardian Fiduciary Services, LLC, has never been given written permission by the South Carolina Board of Financial Institutions to conduct trust business of any kind in the State of South Carolina.

RESPONSE: Guardian admits only that it has never been given *written* permission by the South Carolina Board of Financial Institutions. It was, however, given oral permission by the Banking Commissioner. As set forth in CDM's counterclaim, Stephen Mantell contacted the Office of the South Carolina Commissioner of Banking to inquire whether his companies, CDM and Guardian, were permitted to serve in the role of trustee under South Carolina law. He explained the activities of his companies, and was told by the Office that, because CDM and Guardian would not be managing investments on behalf of trusts, they need not complete an application to perform the services of a trust business. The Office did not provide a written opinion.

7. Admit that CDM Corporation, Inc. and Guardian Fiduciary Services currently operate and control, and have at all times in the six months prior to the initiation of this action, operated and controlled the website at www.gfs-cdmcorporation.com and its subpages.

RESPONSE: Defendants admit that they currently operate and control the website and its subpages. At times, a subcontractor assists with web maintenance issues and has

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temporary control of the website.

8. Admit that the documents attached hereto, labeled as BOFI Doc. No. 0001 through 0012 are true and accurate representations of the textual content of CDM Corporation, Inc. and Guardian Fiduciary Services website for any period of time within the six months prior to the initiation of this action.

RESPONSE: Defendants admit only that the textual content in question represents a prior iteration of the website. At the request of Plaintiff, all references to trusts were removed from the website.

9. Admit that CDM Corporation, Inc., holds itself out, or has, within the last year, held itself out to the public as providing the services of acting as conservator.

RESPONSE: Admit.

10. Admit that Guardian Fiduciary Services, LLC, holds itself out, or has, within the last year, held itself out, to the public as providing the services of acting as conservator.

RESPONSE: Admit.

11. Admit that CDM Corporation, Inc., currently serves as conservator for at least one individual.

RESPONSE: Admit.

12. Admit that Guardian Fiduciary Services, LLC, currently serves as conservator for at least one individual.

RESPONSE: Deny.

13. Admit that CDM Corporation, Inc., holds itself out, or has, within the last year, held itself out to the public as providing the services of acting as guardian.

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RESPONSE: Admit.

14. Admit that Guardian Fiduciary Services, LLC, holds itself out, or has, within the last year, held itself out, to the public as providing the services of acting as guardian.

RESPONSE: Admit.

15. Admit that CDM Corporation, Inc., currently serves as guardian for at least one individual.

RESPONSE: Admit.

16. Admit that Guardian Fiduciary Services, LLC., currently serves as guardian for at least one individual.

RESPONSE: Admit.

17. Admit that CDM Corporation, Inc., holds itself out, or has, within the last year, held itself out to the public as providing the services of acting as personal representative of an estate.

RESPONSE: Admit.

18. Admit that Guardian Fiduciary Services, LLC, holds itself out, or has, within the last year, held itself out, to the public as providing the services of acting as personal representative of an estate.

RESPONSE: Admit.

19. Admit that CDM Corporation, Inc., currently serves as personal representative of at least one estate.

RESPONSE: Admit.

20. Admit that Guardian Fiduciary Services, LLC, currently serves as personal representative of at least one estate.

RESPONSE: Deny.

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21. Admit that CDM Corporation, Inc., holds itself out, or has, within the last year, held itself out to the public as providing the services of acting as power of attorney for an individual, whether healthcare power of attorney, durable power attorney, or otherwise.

RESPONSE: Admit.

22. Admit that Guardian Fiduciary Services, LLC, holds itself out, or has, within the last year, held itself out, to the public as providing the services of acting as power of attorney for an individual, whether healthcare power of attorney, durable power attorney, or otherwise.

RESPONSE: Admit.

23. Admit that CDM Corporation, Inc., currently serves as power of attorney for at least one individual, whether healthcare power of attorney, durable power attorney, or otherwise.

RESPONSE: Admit.

24. Admit that Guardian Fiduciary Services, LLC, currently serves as power of attorney for at least one individual, whether healthcare power of attorney, durable power attorney, or otherwise.

RESPONSE: Deny.

25. Admit that CDM Corporation, Inc., holds itself out, or has, within the last year, held itself out to the public as providing the services of acting as trustee of a trust.

RESPONSE: CDM denies that it holds itself out as providing the services of acting as trustee of a trust. Any references to serving as trustee of a trust have been removed from the company website.

26. Admit that Guardian Fiduciary Services, LLC, holds itself out, or has, within the last year, held itself out, to the public as providing the services of acting as trustee of a trust.

RESPONSE: Deny.

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27. Admit that CDM Corporation, Inc., currently serves as trustee of at least one trust.

RESPONSE: CDM Corporation is not currently serving as a trustee of any trust, or has moved to install Stephen Mantell, individually, as trustee. Guardian denies that it holds itself out as providing the services of acting as trustee of a trust. Any references to serving as trustee of a trust have been removed from the company website.

28. Admit that Guardian Fiduciary Services, LLC, currently serves as trustee of at least one trust.

RESPONSE: Deny.

29. Admit that the present civil action is related to disciplinary action by a State licensing board.

RESPONSE: This request requires a legal conclusion, and therefore requires no response from Defendants.

30. Admit that Plaintiff initiated the present civil action with substantial justification in pressing its claim against Defendants.

RESPONSE: Deny.

31. Admit that Stephen Mantell has no evidence, other than his own assertion, of his purported conversation with a representative of the South Carolina Board of Financial Institutions, inquiring whether Defendants were "permitted to serve in the role of trustee under South Carolina law."

RESPONSE: Deny. The Banking Commissioner, Mr. Louie Jacobs, may testify in support of Mr. Mantell's assertions, as he was also a party to the conversations in question.

32. Admit that, in Stephen Mantell's purported conversation with a representative of the South Carolina Board of Financial Institutions, inquiring whether Defendants were "permitted to serve

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in the role of trustee under South Carolina law," he made no inquiry regarding Defendants' authorization to serve as a guardian of an individual, and the representative made no assertion that either Defendant was authorized to do so.

RESPONSE: Deny.

33. Admit that, in Stephen Mantell's purported conversation with a representative of the South Carolina Board of Financial Institutions, inquiring whether Defendants were "permitted to serve in the role of trustee under South Carolina law," he made no inquiry regarding Defendants' authorization to serve as a conservator for an individual, and the representative made no assertion that either Defendant was authorized to do so.

RESPONSE: Deny.

34. Admit that, in Stephen Mantell's purported conversation with a representative of the South Carolina Board of Financial Institutions, inquiring whether Defendants were "permitted to serve in the role of trustee under South Carolina law," he made no inquiry regarding Defendants' authorization to act as a power of attorney for an individual, whether healthcare power of attorney, durable power attorney, or otherwise, and the representative made no assertion that either Defendant was authorized to do so.

RESPONSE: Deny.

35. Admit that, in Stephen Mantell's purported conversation with a representative of the South Carolina Board of Financial Institutions, inquiring whether Defendants were "permitted to serve in the role of trustee under South Carolina law," he made no inquiry regarding Defendants' authorization to act as a personal representative of an estate, and the representative made no assertion that either Defendant was authorized to do so.

RESPONSE: Deny.

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Counsel for Defendants

March 12th, 2021

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Conservator

As Conservator, we are charged with the preservation of the Client's estate to include the securing and marshaling of all existing personal and real property, investment of residual funds, completion of an annual accounting of all income and expenses, completion of state and federal tax returns via certified agent and payment of fees and monthly expenses.

General Conservatorship

General Conservatorship is established for an adult who needs the assistance of another party to handle their finances and other affairs. General Conservatorships are granted to those who are elderly or have been impaired by an illness or accident.

Limited Conservatorship

A Limited Conservatorship is established for those adults who cannot handle their own finances and other personal matter due to a development disability.

Conservatorship of the Estate

1. Locate and take control of assets

Opening bank,

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and managing investments

3. Accessing safe deposit boxes, adding names or removing names

4. Public Medi-Cal, Medicare, SSA, failed pensions and frozen benefits

5. Dealing with Judgments and creditors

6. Investments - Understanding the Uniform Prudent Investor Act or the Prudent Income and Principal Act; Guardianships or Limited Conservatorships

7. Care for a minor, developmentally disabled person or a property.

In the case of a limited Conservatorship, the Court will determine which of these aspects the Conservator should have control over:

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- Entrance into a contract
- Medical consent
- Social and personal relationships
- Decisions about desications for the conservatee

The conservator may be granted all of these powers of a combination of a few of them.

Temporary Conservatorship

A Temporary Conservatorship is important for when a petition for appointment of conservator is pending. Another reason it ma y be important is if the court finds that an urgent situation exists which will likely result in harm to the property, income, or entitlements of the disabled adult. At that point the court will appoint a temporary conservator. The length of time for a temporary conservator is set by the individual state, but is often around 90 days. This amount of time can be extended for good cause. Temporary conservatorships can also be used where the disabled adult, also termed the ward, is merely suffering from a temporary condition that renders him or her unable to manage their affairs.

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Guardianship

We are a certified professional guardian agency with two certified guardians on staff. We strive for the least restrictive methods of care. We believe in keeping family and friends of the incapacitated person informed of the clients condition and when appropriate, request input as to the important decisions that need to be made.

Guardians are appointed as part of a legal process created to protect the rights of the individual while identifying areas of vulnerability that require addressing Guardianship is appropriate when the individual requires a surrogate to make of implement important decisions. The duties of a guardian can include a wide variety of activities such as:

- Crisis Intervention
- Property Management
- Income Management
- Expense Management
- Medical Care Management
- Management of Living Arrangements and Care

Guardians are required by law to make an initial report that includes a detailed description of the client's assets, care needs and the plans for the patient. Guardians are also required to provide to the court an annual cost report of the Guardian's activities.

Types of Guardianship

Full Guardianship

Limited Guardianship

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Joint Guardianship

- Additionally, Temporary Guardianship is appointed for a limited time period as described in the Court Order or until the circumstances that required the appointment is cured.

- Court appointed guardians are obligated to make decisions based upon what are known to be the client's competent preferences or else upon the best interests of the client. A guardian of the estate may be given authority to assume control over bank accounts, real property, personal property and other assets. The guardian of the estate typically assumes responsibility for payment of routine bills and managing claims against the client's assets.

- A guardian of the person often has responsibility for ensuring that the client's medical and personal care needs are met. This can entail a wide variety of assistance depending on the physical condition, cognitive status and living situation of the client. Guardians cannot require the client to accept medical care and are very limited in their ability to direct or otherwise control the client's personal behavior.

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Personal Representative

As Personal Representative (PR), we act in accordance with the Court-ordered process of administering a decedent's estate. We adhere to the provisions of the decedent's Last Will and Testament to include disposition of final assets, allocation and distribution of beneficiary inheritances, negotiation and payment of final debts, completion of final tax returns via certified agent and formal closure of the estate with the Court.

8 Responsibilities of the personal representative

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Power of Attorney

A Power of Attorney is a written document by which a person, the Principal, delegates another, often referred to as the "Agent" or the "Attorney In Fact", to administer the Principals affairs.

As Power of Attorney (POA), we serve in accordance with the specific instrument you have already completed for your Durable, Medical or Financial Power of Attorney needs. We stand ready to act upon the disability or incapacity of the principal and will transact on his or her behalf, many times without the need for a full guardianship or conservatorship proceeding.

A Power of Attorney is voluntary and can be canceled at any time by the Principal. If and when an individual desires to revoke their Power of Attorney, it is important the revocation be recorded to protect both individuals.

There are Four Main Types of Power of Attorney:

LIMITED

Temporary in nature, to allow one to act on behalf of someone else in temporary circumstances.

Read More >

GENERAL

The ability to act on a persons behalf in all general matters.

Read More >

DURABLE

The ability for one to make decisions on someone's behalf after they have been incapacitated.

Read More >

MEDICAL

The ability to make health care decisions on someone's behalf.

Read More >

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Limited Power of Attorney

A limited power of attorney gives someone else the power to act on one's behalf for a very limited purpose. For example, a limited power of attorney could give someone the right to sign a deed to property for you on a day when you are out of town. It usually ends at a time specified in the document.

General Power of Attorney

A general power of attorney is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself. For example, a general power of attorney may give your attorney-in-fact the right to sign documents for you, pay your bills, and conduct financial transactions on your behalf. You could use a general power of attorney if

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or incapacitation unless you rescind it before then.

Durable Power of Attorney

A durable power of attorney can be general or limited in scope, but it remains in effect after you become incapacitated. Without a durable power of attorney, if you become incapacitated, no one can represent you unless a court appoints a conservator or guardian. A durable power of attorney will remain in effect until your death unless you rescind it while you are not incapacitated.

Medical Power of Attorney

A Medical Power of Attorney can include a grant of authority over personal health related issues, including the ability to make substitute health care decisions. This is a valuable tool for ensuring that the preferences the Principal has stated in the Living Will/Health Care Directive are followed.

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Trusteeship

A Trust is a legal document created during a person's lifetime and survives the person's death. A trust can also be done by a will and formed after death. The Trust creates the arrangement and sets out the duties and discretion of the Trustee.

- The *Trustor* is the term used for the person creating and funding the trust
- The *Trustee* is the person or firm named to have control of the assets placed in trust.
- The *Beneficiary* is the person on whose behalf the trust is created and who is intended to benefit from the assets placed in trust. The Trustor and the Beneficiary may be the same person.
- The *Trust Principal* is a general term for assets placed in trust.

While there are many different types of trusts, the basic types are revocable and irrevocable:

- Revocable Trusts (RLT)
- Irrevocable Trust
- Special Needs Trust (SNL)
- Asset Protection Trust
- Charitable Trust
- Constructive Trust
- Spendthrift Trust
- Tax By-Pass Trust
- Testamentary Trust
- Settlement Trust

At GFS we follow as directed by your trust, we administer and safeguard the assets held in the trust. We report to the beneficiaries, file tax returns and make distributions per the instructions in the trust. We prepare court accounting's and take responsibility for the investable assets. We take on the responsibility for all the trust assets, including investable assets and real property.

To Learn More About Trusts, Please Watch This Video

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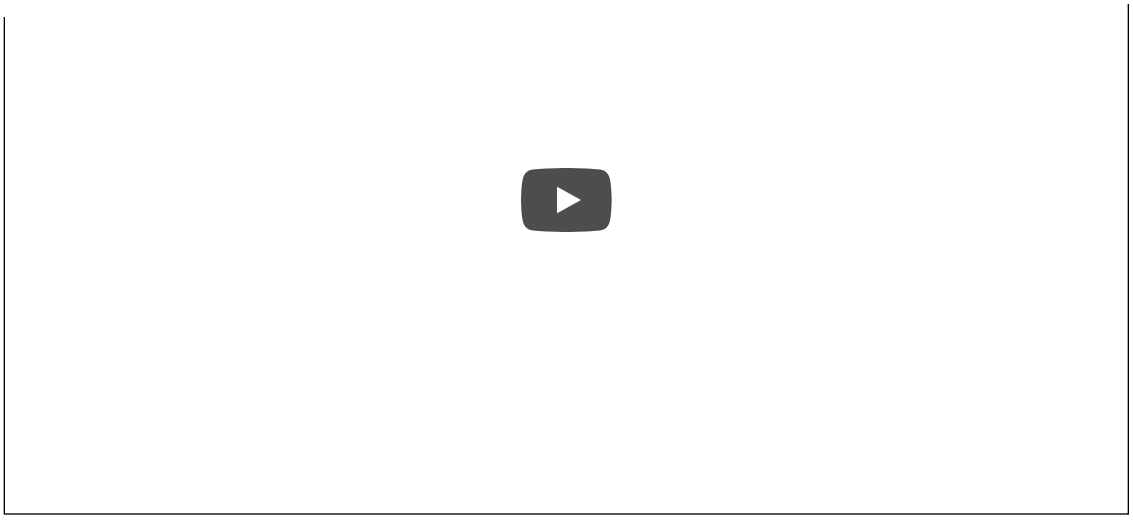

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CASE NO. 2020-CP-22-0882
South Carolina Board of Financial Institutions,	)	
Plaintiff,	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
vs.	)	
CDM Corporation, Inc. and Guardian Fiduciary Services, LLC,	)	
Defendants.	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, defendants CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (together, "Defendants") move for an order granting summary judgment on their counterclaim against Plaintiff South Carolina Board of Financial Institutions ("Plaintiff" or "BOFI"). Defendants' counterclaim seeks a Declaratory Judgment pursuant to Rule 57, SCRCP and the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq*. Specifically, Defendants move for an order finding that:

1. As a matter of South Carolina law, a "trust business," as contemplated by S.C. Code Ann. § 34-21-10, must involve a trust.
2. CDM and Guardian, to the extent they serve as non-trustee fiduciaries including executors, personal representatives of estates, attorneys-in-fact, guardians, or conservators, are not acting as "trust businesses" unless those services are performed on behalf of, or somehow relate to, a trust.
3. Non-trustee fiduciary roles are controlled via the South Carolina Probate Code, not the Board of Financial Institutions. Trusts operate by their own laws and are largely "free

of judicial intervention and without order" suggesting a rationale for BOFI's application process as to trusts. Other non-trustee fiduciary roles are usually appointed, closely supervised, and directed by the probate courts. South Carolina Code Section 62-7-201.

I. SUMMARY

Plaintiff BOFI's lawsuit is a blatant power grab seeking to improperly expand its regulatory reach. The text of S.C. Code Ann. § 34-21-10 is not difficult to understand: "*No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board*." Simply put, any corporation that wishes to conduct a *trust business* in South Carolina must first submit an application (including a $15,000 application fee) and be approved by BOFI. In this lawsuit, however, BOFI insists on enforcing an overreaching definition of "trust business," claiming that the term means much more than the South Carolina Code actually states or reasonably implies. In effect, BOFI - in contravention of the black-letter rule of statutory interpretation - attempts to expand its power to regulate a wide swath of businesses which are not, as a matter of law, "trust business[es]." Defendants seek a declaration from the Court that BOFI's expansive reading of the South Carolina Code is incorrect.

II. PROCEDURAL POSTURE

BOFI filed this lawsuit on October 26, 2020, alleging a violation of S.C. Code Ann. § 34-21-10, which states: "No corporation, partnership or other person shall conduct a *trust business* in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board." (emphasis added). The statute does not define the term "trust business."

The crux of the Complaint is summarized in Paragraph 18: "CDM and Guardian have provided and are currently engaged in providing trust business services, including serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust."

Defendants CDM and Guardian stipulate that they did not submit "a written application to the State Board of Bank Control and receiv[e] written approval from the Board." Further, Defendants acknowledge that CDM previously served in the role of trustee for South Carolina-based trusts in very few (4) of its total engagements (in excess of 50).[1] However, the remaining alleged activities listed in the Complaint - "serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor"- do not constitute a "trust business" as a matter of law, and are therefore not regulated by S.C. Code § 34-21-10. In their Answer and Counterclaim filed on December 11, 2020, Defendants sought a declaration from the Court that Defendants are not a "trust business" as contemplated by § 34-21-10, and that they therefore are not subject to the application process set forth in § 34-21-10.

Both parties filed competing motions for summary judgment in the Court of Common Pleas for the County of Georgetown. Judge Steven H. John denied both Motions on June 10, 2021. This matter was thereafter referred to the Honorable Joe Crosby, Master in Equity for Georgetown County following a Consent Order filed March 11, 2022 and additional discovery.

III. BACKGROUND AND UNDISPUTED FACTS

CDM and Guardian were founded by Stephen P. Mantell in 2009 and 2011, respectively. **Exhibit A**, Affidavit of Stephen P. Mantell, ¶ 3. Mr. Mantell was born in England, but served in the U.S. Navy and is a veteran of the Vietnam War. He is a U.S. Citizen and has lived in South Carolina permanently since 2003. Ex. A, ¶¶ 2-3.

[1] CDM has effectively removed itself, with Court approval, as trustee on all trusts.

CDM and Guardian serve in the roles of guardian, conservator, personal representative and power of attorney for clients across South Carolina. Ex. A, ¶ 4. Generally, the appointments will be stated as: "CDM Corporation, by and through its representative, Stephen P. Mantell." Ex. A, ¶ 6. Nearly all of CDM and Guardian's clients are referred by licensed South Carolina attorneys and then formally appointed by South Carolina Probate Court judges. Ex. A, ¶ 5. According to the South Carolina Probate Code, these judges oversee the activities of Defendants in these non-trustee fiduciary roles. CDM and Guardian are often called when vulnerable individuals have no one else to protect their interests. Ex. A, ¶ 9. Examples of CDM and Guardian's clients include a patient in a coma, severely drug-addicted young people, elderly people with no family, and mentally-ill people. *Id*. These clients, typically, are not able to afford the high fees charged by banks or other "trust businesses" for these services. As such, CDM and Guardian are providing an essential service to the people of South Carolina.

Upon learning of BOFI's interpretation of S.C. Code § 34-21-10, Mr. Mantell removed all references to trusteeships from his companies' promotional material. Further, for those matters in which CDM was named as a trustee, he retained counsel to move those trusteeships to his name, personally, which under no interpretation violates S.C. Code § 34-21-10. Ex. A, ¶ 14. In the future, CDM and Guardian will not serve in the role of trustee.

Mr. Mantell disputes, however, that S.C. Code § 34-21-10, or any other law or regulation, prevents his companies from serving as a guardian, conservator, personal representative or power of attorney. Mr. Mantell has spent over a decade building his businesses. During this time, he reasonably relied on a plain-reading of the South Carolina Code and good-faith belief that his businesses were permitted and supported by South Carolina law. Now, the specter of this lawsuit threatens to severely damage, if not outright destroy, all he has built. As a tax-paying South

Carolina citizen, Mr. Mantell is rightfully outraged that the State is attempting to shut down his businesses. Ex. A, ¶¶ 12-13, 17-18.

IV. LEGAL STANDARD

Pursuant to Rule 56(c), SCRCP, summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Baird v. Charleston County*, 333 S.C. 519, 529 (1999). *See also Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579 (Ct. App. 2001) (explaining that "[t]he plain language of Rule 56(c)" requires the court to grant summary judgment where a party "fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial").

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 558 (Ct. App. 2008). However, once that party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts,' but 'must come forward with specific facts showing that there is a genuine issue for trial."' *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101 (1991) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (emphasis in original). *See also Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 390 (Ct. App. 2010) (non-moving party may not rely on speculation to survive summary judgment) (citations omitted); *McKnight v. S. Carolina Dep't of Corr*., 385 S.C. 380, 389 (Ct. App. 2009) ("[E]vidence must amount to more than speculation and conjecture to submit a case to the jury.") (citations omitted).

V. ARGUMENT AND CITATION OF AUTHORITY

Before the Court is the statutory interpretation of the term "trust business," as contemplated by S.C. Code § 34-21-10. The term "trust business" is either:

1. Much broader than the plain meaning of that term, to include *any* business which serves as a conservator, guardian, attorney-in-fact, personal representative, or executor, *regardless* of whether the business is involved in any way with an actual trust; *or*
2. As it sounds, a business involved in the creation or administration of trusts.

In its Complaint, Plaintiff advocates for the expansive definition, claiming that a variety of businesses which have nothing to do with trusts must still complete an application with BOFI (including payment of a $15,000 application fee as well as annual supervisory fees of $19,600) in order to legally operate in South Carolina. This overreaching definition is plainly incorrect, as set forth below.

A. The usual and customary meaning of a trust business is simply that - a business involved in the administration of trusts.

The South Carolina Code does not define the term "trust business," and the term has not been defined by the South Carolina courts.

Where the legislature elects not to define a term used in a statute, South Carolina courts must interpret the term in accord with its "usual and customary meaning." *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994).

While there are many available legal definitions of a trust, the usual and customary meaning aligns with the definition found in Black's Law Dictionary: "An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery." *See* https://thelawdictionary.org/trust/.

Logically, the usual and customary definition of a "trust business" is a business involved with the administration of trusts. *See*, 9 C.J.S. Banks and Banking § 650 ("It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts, rather than carry on the ordinary functions of banking."); *Loudoun*

Nat. Bank of Leesburg v. Continental Trust Co., 180 S.E. 548, 551, 164 Va. 536, 543 (Va. 1935) ("The primary and ordinary conception of a trust company is a corporation to take and administer trusts.").

Any effort to sweep various non-trustee fiduciary roles - including acting as an executor, conservator and personal representative - into the definition of a "trust business" would extend far beyond the usual and customary meanings of the term.

B. In separate code sections, the S.C. Code specifically regulates conservators, guardians, attorneys-in-fact, personal representatives and executors.

BOFI claims that S.C. Code § 34-21-10, merely by use of the term "trust business," governs all businesses which are involved with non-trustee fiduciary roles, including conservatorships, guardianships, and serving as attorney-in-fact, personal representatives or executors. However, requirements and regulations for, and the probate court's appointment of, each of these non-trustee fiduciary roles are set forth explicitly, and in great detail, in the South Carolina Probate Code. The probate code delineates the probate court's discretion and power to appoint non-trustee fiduciaries. For example:

Guardianship and Conservatorship. S.C. Code §§ 62-5-308 and 62-5-408 gives the court the power to consider "persons" to serve as guardians and conservators, respectively, who are otherwise qualified in an order of priority. S.C. Code § 62-5-101(17) defines "persons" as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity." S.C. Code § 62-5-405 allows the court to "authorize a conservator or special conservator" to exercise power. There is no restriction or requirement under Article 5 of the Probate Code that a commercial entity meet the requirements of § 34-21-10.

Agent under Power of Attorney. An Agent is defined in S.C. Code § 62-8-102(1) as a "person" granted authority to act for a principal under a power of attorney. "Person" is further defined under S.C. Code § 62-8-102(6) as an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity." There is no restriction or requirement under Article 8 of the Probate Code that a commercial entity meet the requirements of § 34-21-10.

Personal Representative. S.C. Code § 62-3-203 allows a court to appoint a "person" who is not disqualified. "Person" is defined as an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity." The Code further limits corporate entities that can serve as personal representatives as ones that have a business in this State. There is no restriction or requirement under Article 3 of the Probate Code that a commercial entity meet the requirements of § 34-21-10.

In contrast, South Carolina Code Section 62-7-201, explicitly distinguishes trust management, including appointment and removal of a trustee, from other non-trustee fiduciary roles by expressly limiting the probate court's involvement in the management of trusts. Section 62-7-201 states:

> A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust.

S.C. Code Ann. § 62-7-201(b).

In so stating, the South Carolina Probate Code expressly limits its role in the "internal affairs of trusts," unlike its active involvement in other non-trustee fiduciary roles. This limited involvement of the probate court in management of trusts presumably ushered in the rationale for BOFI's regulation of trust businesses as so stated in South Carolina Code Section 34-21-10.

Moreover, Section 34-21-10 falls under Title 34 of the S.C. Code, Banking, Financial Institutions and Money, which primarily addresses security and investment of funds and securities. It does not address the roles at issue in this lawsuit, non-trustee fiduciary roles including: conservators, guardians, attorneys in fact, personal representatives, and executors. To look to a section of the Code pertaining to banking when attempting to define the requirements of a company merely acting in a fiduciary capacity goes against the practical and reasonable interpretation of the statute based on the design of the legislature. *Smith v. South Carolina Ins. Co*., 350 S.C. 82 (Ct.App.2002). The relevant sections of the South Carolina Code which pertain to the fiduciary roles at issue in this lawsuit clearly and unambiguously do not require § 34-21-10 compliance.

The probate courts already actively regulate these roles as fiduciaries are directly accountable to the probate court which monitors their work. **Exhibit B**; Affidavit of Julian Walker ¶¶ 9-10. South Carolina probate courts have and continue to utilize these sections of the code when making their discretionary decisions to appoint companies, including Defendants, to non-trustee fiduciary roles. **Exhibit C**; Affidavit of Dundee Carter at ¶ 9. The probate court routinely appoints companies to serve in non-trustee fiduciary capacities without requiring application to the Board of Financial Institutions in order to serve in their court appointed role. *Id.* at ¶¶ 19-20.

1. **BOFI miscategorizes Defendants' argument. Defendants make no claim that a trust business cannot serve as a non-trustee fiduciary. Plaintiff's citations to statutes allowing trust businesses to serve in such a role are irrelevant.**

Plaintiff's Memorandum in Support of its Motion for Summary Judgment and Memorandum in Response to Defendants' Motion for Summary Judgment, filed June 1, 2021, attempts to muddy

the waters by citing to state and federal statutes in which a "trust business" or "trust company" may be permitted to serve as conservator, guardian, attorney-in-fact, personal representative, or executor.[2] None of these citations contradict Defendants' position; they merely set forth permitted instances where a trust company, under certain circumstance, may serve as a non-trustee fiduciary. This is an uncontested fact that has no bearing on the current issue. Defendants make no claim against the right of a trust company to serve in such capacities. In fact, the crux of Defendants' argument is that any "person" may serve as a non-trustee fiduciary, including – but not limited to – trust companies. [3]

So too, for the same reason, is Plaintiff's citation to 12 U.S.C.A. § 92a. unpersuasive to the issue at bar. The statute states:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, *or in any other fiduciary capacity* in which State banks, trust companies, *or other corporations* which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

---

[2] S.C. Code Ann. § 34-15-10 establishes that a trust company must have "at least two hundred fifty thousand dollars total unimpaired capital" to be appointed as a trustee, a personal representative of an estate, a receiver, or a conservator;
S.C. Code Ann. § 35-5-20 sets forth provisions whereby a trust company, "when acting as agent, custodian or attorney-in-fact," must register securities;
S.C. Code Ann. § 35-5-40 indicates the legislature's understanding that a trust company's fiduciary relationship may be established by "will, judgment, decree, or other instrument" rather than a trust, alone;
S.C. Code Ann. § 62-3-603(A)(3) provides that a trust company acting as the personal representative of an estate is not required to file a bond with the Probate Court, unless the will expressly requires a bond;
S.C. Code Ann. § 62-3-303(e)(3) prohibits a national trust company from serving as personal representative of an estate in South Carolina, demonstrating the legislature's understanding

[3] S.C. Code Ann. § 62-8-102 defines "person" as "an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity."

12 U.S.C.A. § 92a. (emphasis added). Defendants make no contention that a trust company cannot act in a non-trustee fiduciary role, including the several fiduciary capacities listed in § 92a. The issue in this matter is not whether a trust company may serve as a non-trustee fiduciary, but rather whether a non-trustee fiduciary is acting as trust business.

C. The rules of statutory interpretation do not support BOFI's overreaching reading of § 34-21-10.

The language of § 34-21-10 is plain and unambiguous. For example, Colonial Trust is a trust business, Wells Fargo Delaware Trust Company, N.A. is a trust business, and Truist Delaware Trust Company is a trust business. The name applies to "trust businesses," as that term is commonly understood. It does not apply, as BOFI contends, to a variety of unrelated non-trustee fiduciary businesses. "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *City of Camden v. Brassell*, 486 S.E.2d 492, 494–95, 326 S.C. 556, 560–61 (Ct. App. 1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

Oddly, Plaintiff's primary argument rests upon its own inference drawn from the language of S.C. Code Ann. § 34-21-10. The inference stems from the Section's clarification that "nothing contained in this section shall prevent a natural person … qualifying and acting as a trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." *Id.* However, what Plaintiff fails to note, is that the inference it makes is unnecessary when looking to other sections of the South Carolina Probate Code, which specifically regulate conservators, guardians, attorneys in fact, personal representatives, and executors. As explained in detail above, it is within Section 62 of the South Carolina Code and the language therein that explicitly sets forth the requirements and regulations surrounding each of these roles; importantly, nothing within this Section requires compliance with § 34-21-10.

Even if it were ambiguous, the "cardinal rule" of statutory construction requires the Court to ascertain the legislative intent of the statute State v. Scott, 351 S.C. 584, 588 (2002) ("The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature.") In this instance, there is simply no indication that the State Legislature intended to require BOFI to demand applications from any company which sought to act as a conservator, guardian, attorney-in-fact, personal representative or executor in the state of South Carolina. If the State Legislature intended this result, it would have included this specific language in the statute. Instead, however, those roles are regulated in great detail elsewhere in the Code. Should BOFI seek this extension of the law, its remedy would be to approach the legislature.

Finally, to the extent the Court determines S.C. Code § 34-21-10 is somehow ambiguous, any ambiguity should be interpreted conservatively rather than expansively. Interpreting the statute expansively risks empowering BOFI in ways never intended by the State Legislature. More importantly, it risks harming South Carolina businesses, such as CDM and Guardian, which reasonably relied on a plain meaning of the statute. *See Bennett v. Sullivan's Island Bd. of Adjustment,* 313 S.C. 455, 438 S.E.2d 273 (Ct. App. 1993) (any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law).

D. The South Carolina Office of Attorney General confirmed a limited definition of the term "trust business."

On two occasions, South Carolina's Attorney General was asked to provide an opinion regarding S.C. Code § 34-21-10. In the first, a 1995 Opinion, the Office of Attorney General cited Corpus Juris Secundum for the definition of a trust business: "It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts, rather than carry on the functions of banking." South Carolina Attorney General Letter to The Honorable John C. Land, III, 1995 WL 803721, at 3, attached as **Exhibit D**.

In a 1996 Opinion, the Office of Attorney General explored the issue in greater detail, but with the same outcome:

> Neither is the term "trust business" defined [in the statute] or elsewhere in the Code, to my knowledge.
>
> However, courts have defined a "trust business" or a "trust company" according to the common and ordinary definition of those terms. *In Carney v. Sam Houston Underwriters*, 272 S.W.2d 942, 946 (Tex. Civ. App. 1954), the Court stated:
>
> > [w]e believe that a corporation in the trust business and lawfully advertising itself as a trust company is a trust company just as much as a company in the lumber business is a lumber company. This accords with the ordinary conception of a trust company as being one authorized to take and administer trusts. (emphasis added).
>
> In *Goss and Hamlyn Howe v. State*, 285 P.2d 428, 431 (Okl. 1955), the Court cited Websters New International Dictionary (2d ed. unabridged) defining a "trust company" as "any corporation found for the purpose of acting as trustee." An important indicia is also whether the business holds itself out to the public as a "trust company." *Carney v. Sam Houston Underwriters, supra*. It is also said that a "trust company" is a corporation formed for the purpose of taking, executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc.
>
> The foregoing definitions are consistent with those set forth in Title 34 of the Code. *See, e.g*. Sections 34-21-20 through -70; Section 34-21-210 (1) [definition of "trust institution"]; Section 34-21-220 et seq ["common trust funds"].
>
> . . .
>
> Therefore, as I read Section 34-21-10, if a corporation or entity was transacting or carrying on trust business, i.e. *taking, accepting, administering and executing trusts* . . .

South Carolina Attorney General Letter to the Commissioner of Banking, Louie Jacobs, 1996 WL 93998, at 2 (emphasis added), attached as **Exhibit E.**

As such, when given the opportunity to interpret S.C. Code § 34-21-10, the Office of the Attorney General has consistently found that a "trust business" is exactly what it sounds like: "a

corporation or entity . . . transacting or carrying on trust business, i.e. taking, accepting, administering and executing trusts."

E. BOFI's alleged long-held interpretation that trust business includes serving as a non-trustee fiduciary is unsupported.

Plaintiff's Memorandum in Support of Summary Judgment and Memorandum in Response to Defendants' Motion for Summary Judgment, filed June 1, 2021, argues that BOFI's own interpretation of the meaning of "trust business" should be given deference. In so arguing, Plaintiff cites to *the Matter of J. Earle Financial, LLC* as evidence of BOFI's allegedly long-held interpretation that serving as a conservator, guardian, personal representative, and attorney in fact qualifies as conducting a "trust business." However, *the Matter of J. Earle Financial, LLC* completely misses the mark in proving that assertion.

First, it is worth noting that this matter was resolved through a consent order, signed by the Commissioner of Banking, with no formal adjudication of the issues. Second, and most importantly, *the Matter of J. Earle Financial, LLC* centers on a company whose primary function was acting as a *trustee*, something Defendants have already conceded constitutes "trust business" activities. Although J. Earle Financial, LLC also acted as a Personal Representative, that fact was not central to the issue after the company admitted to serving, and continuing to serve, as trustee to several named Trusts. *The Matter of J. Earle Financial, LLC* ("the website states that the company's sole member has over 25 years of trust experience and is a Certified Trust and Financial Advisor and that J. Earle Financial, LLC's 'function is being the managing agent for the trustees.'") That case presented no question that J. Earle Financial, LLC was conducting a trust business. Moreover, J. Earle Financial, LLC apparently chose not to contest whether its activities as personal representative also fell within the "trust business" definition.

Accordingly, this case fails to support Plaintiff's argument on two fronts: (1) it does not present evidence of a "long-held" interpretation that trust businesses include general fiduciary roles and

(2) it does not establish any precedent that acting as a personal representative constitutes conducting a "trust business." Instead, this case only confirms the obvious: companies acting as trustees are trust businesses.

Plaintiff references this case in an attempt to draw similarities where there are none. In *J. Earle Financial, LLC*, the company was and continued to serve as a trustee to several trusts. Here, following BOFI's notification that CDM and Guardian were acting without authority under § 34-21-10, Defendants *voluntarily* began the process of withdrawing from that role and no longer serves in the capacity as trustee.[4] Unlike *J. Earle Financial, LLC*, the Defendants here are *only* serving as a personal representatives and in other non-trustee fiduciary positions, which pursuant to a plain reading of the statutes, is not a trust business. Accordingly, the only evidence Plaintiffs propound in order to convey its supposedly long-held interpretation of § 34-21-10, is an irrelevant consent order which does not address the issue set forth in this case.

F. Public policy favors allowing companies, like Defendants, to continue to serve in non-trustee fiduciary capacities.

Probate courts routinely utilize companies, like Defendants, to serve as non-trustee fiduciaries for "vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those persons whom have no relative or family member that is willing, cable or qualified to serve." Ex. C; Carter Aff. ¶ 12. Again, these companies are appointed by South Carolina Probate Courts under statutorily defined powers, at the court's discretion, to serve in non-trustee fiduciary roles including executors, personal representatives of estates, attorneys-in-fact, guardians, or conservators without BOFI application and approval. *Id* at ¶ 9; Ex. B; Walker Aff. ¶ 19, 22. To accept BOFI's position is to usurp the jurisdiction of the

[4] CDM has effectively removed itself, with Court approval, as trustee on all trusts.

probate court and materially interrupt the probate court's ability to select non-trustee fiduciaries or to conduct its day to day operations.

Compliance with BOFI's application process requires a $15,000 application fee and $19,600 annual supervisory fee. Such a financial burden would make it financially irresponsible for companies like Defendants to serve as non-trustee fiduciaries for persons with limited financial means as these as these clients are often taken on for altruistic purposes with little expectation of financial gain. Public policy favors a system in which the underprivileged are given access to competent, qualified, and affordable non-trustee fiduciary services. Requiring BOFI compliance would render these services nearly unattainable.

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully request that their Motion be Granted, and that the Court issue an Order finding that:

1. As a matter of South Carolina law, a "trust business," as contemplated by S.C. Code § 34-21-10, must involve a trust, and
2. CDM and Guardian, to the extent they serve as executors, personal representatives of estates, attorneys-in-fact, guardians, or conservators, are not acting as "trust businesses" unless those services are performed on behalf of, or somehow relate to, a trust.
3. Non-trustee fiduciary roles are controlled via the South Carolina Probate Code, not the Board of Financial Institutions.

Respectfully Submitted,

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s/ James Myrick

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August 22, 2022
Charleston, South Carolina

Counsel for Defendants CDM Corporation, Inc. and Guardian Fiduciary Services, LLC

ELECTRONICALLY FILED - 2021 Apr 16 3:39 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200882

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2020-CP-22-0882 **AFFIDAVIT OF STEPHEN P. MANTELL**

1. My name is Stephen P. Mantell. I am a resident of South Carolina. I am above the age of 18 and competent to testify in this matter. If called as a witness, I would testify as set forth below.
2. I was born in England and first moved to the United States at the age of ten. I fought in the Vietnam War on behalf of the U.S. Navy. I am a U.S. citizen.
3. I moved permanently to South Carolina in 2003. In 2009, I founded a company called Senior Helpers. I incorporated CDM Corporation, Inc. in 2009 and formed Guardian Fiduciary Services, LLC in 2011.
4. I created Senior Helpers, CDM and Guardian for the purpose of providing needed services for elderly, disabled, and otherwise compromised individuals in South Carolina. Services include serving as a guardian, conservator, personal representative and power of attorney.
5. Nearly all of CDM and Guardian's clients are referred by licensed South Carolina attorneys and the cases are overseen by South Carolina Probate Court Judges. These attorneys and judges have worked with me for years and trust me in these positions.
6. Generally, the appointments will be stated as: "CDM Corporation, by and through its

Exhibit A

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representative, Stephen P. Mantell."

7. Operating through my company, instead of individually, allows me to obtain insurance. This insurance benefits me personally, but also benefits my clients.
8. Typically, CDM and/or Guardian will serve as guardian or conservator in those cases in which the client has no family or any other contacts who are willing or able to serve in those roles. Judges and attorneys contact me when they know the individual has nobody capable or willing to look after their interests.
9. Examples of CDM's clients include a patient in a coma, a severely drug-addicted young person, and a mentally-ill person. In some instances, I am called to make decisions regarding my clients' medical treatment, including end-of-life decisions.
10. Generally, my clients are not able to pay the large fees demanded by "trust companies." In fact, I frequently provide my services for free when my clients are unable to pay bills. In this way, I serve a sector of the population which desperately needs assistance. Without the services of CDM, it is not clear who they would turn to.
11. In most cases, the services performed by CDM and Guardian are directly overseen by the Probate Court. In those cases, the Probate Court determines the appropriate fees for these services.
12. I had two telephone conversations with Banking Commissioner Louie Jacobs in 2011. We discussed the various services provided by my companies in detail, including conservatorships, powers of attorney, acting as a personal representative, and trusteeships. Mr. Jacobs informed me that, because my companies were not actively managing investments, we were not in violation of South Carolina's regulations.
13. I built my companies based on my good faith understanding of South Carolina law. I was

Exhibit A

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shocked to learn that the South Carolina Board of Financial Institutions ("BOFI") now claims that the activities performed by my companies are prohibited under South Carolina law.

14. Upon learning of BOFI's complaints about my companies, I have removed all references to trusts from my marketing materials, and taken steps to remove CDM from any trustee appointments. Guardian does not serve as trustee for any trusts. As of today, CDM continues to serve as trustee for only four trusts. For each of these trusts, CDM has retained attorneys, and those attorneys have taken affirmative steps to remove CDM as trustee. The trusts at issue are the following:

    a. Clark A. Rogers Family Trust. The Primary Trustee is named as "CDM Corporation, d/b/a Senior Helpers, of and through its President and representative, Stephen P. Mantell."

    b. Mary R. Rogers Investment Trust. The primary Trustee is named as "CDM Corporation, d/b/a Senior Helpers, of and through its President and representative, Stephen P. Mantell."

    c. Revocable Trust Agreement of Thomas G. Anderson. The Trustee is named as "CDM Corporation, by and through it Representative, Stephen P. Mantell."

    d. Patricia A. Fearson Revocable Trust. The Trustee is named as "CDM Corporation, Inc., by and through it representative, Stephen P. Mantell, its corporate successors or assigns."

15. Going forward, CDM and Guardian will refrain from serving as trustee in any new matters, and will no longer perform any roles related to trusts.

16. CDM and Guardian continue to serve as conservator, guardian, attorney-in-fact, and personal representative, frequently as a result of judicial appointment. However, CDM and

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Guardian do not perform these roles on behalf of trusts.

17. This lawsuit brought by the Board of Financial Institutions has resulted in significant damages to me and my companies. In addition to the mounting legal fees, the pending lawsuit has adversely impacted the reputation of my companies, causing clients and potential clients to believe that the companies have done something illegal. It will likely take years to determine the full impact of this reputational damage.

18. I have spent over a decade building my businesses, as well as my reputation in the community. As a taxpaying small-business owner attempting to fill a needed niche and help the citizens of South Carolina, I am perplexed as to why a state agency is attempting to destroy my businesses.

19. All of the allegations contained in the Answer and Counterclaim, as well as the Motion for Summary Judgment, are true and accurate to the best of my knowledge, information, and belief.

AFFIANT FURTHER SAYETH NAUGHT

Name: Stephen Mantell

SWORN TO AND SUBSCRIBED BEFORE ME
15th day of April, 2021.

Notary Public for the State of South Carolina

My commission expires: 4/7/27

TRACEY A. WEILAND NOTARY PUBLIC MY COMMISSION EXPIRES 4/7/27 SOUTH CAROLINA

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2020CP2200882 **AFFIDAVIT OF JULIAN W. WALKER, JR.**

1. My name is Julian W. Walker, Jr., I am a resident of South Carolina, having been born and raised in Charleston. I am above the age of 18 and competent to testify in this matter. If called as a witness, I would testify as set forth below.

2. I obtained my undergraduate degree from the University of the South (Sewanee) in 1956 and my law degree from Duke University in 1959. I have 27 years of experience working in trust banking, the last 23 of which as the trust executive officer in charge of the state-wide trust division of the First National Bank of South Carolina and, by acquisition, the trust executive officer in charge of the state-wide trust division of the South Carolina National Bank and, by acquisition, the trust executive officer in charge of the state-wide South Carolina Trust Division of Wachovia Bank, National Association. These 23 years were March 1, 1971, to March 1, 1994.

3. I am a member of the South Carolina Bar's Probate, Estate Planning, and Trust Section and served as a member of the Section's Legislative Liaison Council and its Uniform Trust Code Study Committee, which drafted the proposed South Carolina Trust Code, that was subsequently enacted effective January 2006.

4. Because my three banking-organization employers set forth in paragraph 2 above were national and not subject to supervision by the plaintiff South Carolina Board of Financial Institutions, I had no direct and continuing involvement with the plaintiff Board. However, there were times when I did have limited contacts with the plaintiff Board:

a. In the early 1970's, I served as the chairman of what was then the Trust Division of the South Carolina Bankers Association. In the course of my many communications, I spoke by phone with the plaintiff Board and learned for the first time of SC Code Section 34-21-10. When I asked the obvious question as to the meaning of "trust business", the plaintiff Board representative told me that the South Carolina Legislature had not included a definition of "trust business" in SC Code Section 34-21-10.

b. As the 1970's progressed and large banks in South Carolina became increasingly interested in acquiring smaller South Carolina banks, both national and state, the CEO of my bank (FNBSC), a large acquirer, asked me to determine what, if any, issues we might encounter when trying to acquire a South Carolina state bank. During my phone call to the plaintiff Board, I again discussed SC Code Section 34-21-10 and was told that the South Carolina Legislature still had not included a definition of "trust business" in SC Code Section 34-21-10.

c. In the mid-1970's, a trust banker with what was then Provident Bank in Philadelphia called me and said he was aware of SC Code Section 34-21-10 and asked what I could tell him about the meaning of "trust business" in that

statute. I told him what I knew from my earlier contacts with the plaintiff Board and that I would update my knowledge and advise him accordingly. As before, during my follow-up phone call to the plaintiff Board, I again discussed SC Code Section 34-21-10 and was told that the South Carolina Legislature still had not included a definition of "trust business" in that statute. I then called the trust banker in Philadelphia and told him what I had learned, and he asked me why the South Carolina Legislature had not done so. I said I did not know. He did not tell me the reason for his interest in this matter.

d. In the late 1970's, the then-current beneficiary of an active South Carolina trust died. The trust was being administered by a South Carolina state bank. The terms of that trust provided that, at the death of the beneficiary, the terms of her will would govern and control the identity of the trustee that would continue to administer the trust for the benefit of the successor beneficiaries. The terms of her will provided that at her death the successor trustee would be my bank, the First National Bank of South Carolina. I called the plaintiff Board to determine if there were any issues to be addressed with this change of trustee to a national bank. During that phone call, I again discussed SC Code Section 34-21-10 and was again told that the South Carolina Legislature still had not included a definition of "trust business" in that statute. I asked why the Legislature had not done so and was told by the representative of the plaintiff Board that he did not know why.

5. In my opinion, the preparation and presentation of the Uniform Trust Code in 2000 by the National Conference of Commissioners on Uniform State Laws and the

subsequent enactment by the South Carolina Legislature of the South Carolina Trust Code (SCTC) effective January 2006 have contributed significantly to what should now be the understanding of the meaning of "trust business" in SC Code Section 34-21-10. My opinion is strongly supported by subsection (b) of the following section of the South Carolina Trust Code:

Section 62-7-201. ***Role of court in administration of trust.***

(a) Subject to . . . the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts…

(b) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law or by the terms of the trust. [Underlining added.]

6. Also note REPORTER'S COMMENT following Section 62-7-201:

Section 62-7-201(b) makes it clear that no single proceeding in the probate court concerning the internal affairs of a trust will have the effect of subjecting the administration of the trust to later continuous supervision by the probate court.

7. I understand that, in practice in South Carolina for many years prior to January 2006, the administration of the internal affairs of a trust was conducted essentially in the manner later set forth in this Section 62-7-201. In other words, I believe Section 62-7-201 effectively confirms the years-long practice in South Carolina prior to January 2006.

8. The critically important point is that in South Carolina courts do not have any authority or power to conduct continuing supervisory proceedings of the

administration of the internal affairs of trusts. It is vital, however, that the administration of the internal affairs of South Carolina trusts be subject to continuing supervisory proceedings. And where these trusts are being administered by South Carolina state (not national) trustees, the plaintiff South Carolina Board of Financial Institutions obviously has the sole authority and power to perform this supervisory role. No one should have any problems with the plaintiff Board performing this role and having "trust business" in its enabling statute. It is almost a perfect fit.

9. It must be noted that the scope of Section 62-7-201 is limited to trusts. When, however, the subject moves beyond trusts, conflicts and different opinions may arise. What about personal representatives of decedents estates? Should they be treated the same as trusts for the purposes of the plaintiff Board's sole authority and power? Based on custom and usage in my professional experience, I think not because of the following Section of the South Carolina Probate Code:

> ***SC CODE SECTION 62-3-704. Personal representative to proceed with court sanction.***
>
> A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate under the supervision of the court … [Underlining added.]

10. The same is true, in my opinion based on custom and usage in my professional experience, of the various services covered in **Article 5. *Protection of Persons Under Disability and Their Property***. Continuing supervisory proceedings are provided within the contained and retained ultimate control of the court. *See* Section 62-5-101 *et seq.*

11. Nevertheless, it is here that the plaintiff Board demands that the defendant CDM and Guardian corporations submit to continuing supervision by the plaintiff Board,

even though the defendant corporations no longer administer any trusts, and even though "trust business" remains in SC Code Section 34-21-10 undefined after more than 50 years. No one seems to know the legislative intent when "trust business" first appeared in South Carolina statutory law, but the current meaning of this term should now be established by appropriate means and authority. I know from my own experience as a former trust banker that this term has long been used to describe one type of business, among others, engaged in by trust banks, namely the administration as trustee of the internal affairs of trusts.

12. All opinions contained herein are given to a reasonable degree of professional certainty. I as the affiant have been given a copy of this affidavit.

AFFIANT FURTHER SAYETH NAUGHT

Julian W. Walker, Jr.

NAME: Julian W. Walker, Jr.

SWORN TO AND SUBSCRIBED BEFORE ME
22 day of August, 2022.

Christi S Ashcraft
Notary Public for the State of South Carolina

My commission expires: 9/9/2026

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GEORGETOWN	)	**DOCKET NO.: 2020-CP-22-0882**
South Carolina Board of Financial Institutions,	)	
Plaintiff,	)	**AFFIDAVIT OF DUNDEE W. CARTER**
CDM Corporation, Inc. and Guardian Fiduciary Services, LCC,	)	
Defendants.	)	

1. My name is Dundee Wimpey Carter. I am a resident of Horry County, South Carolina, am over the age of eighteen.

2. I received my undergraduate Bachelors of Art degree from the College of Charleston in 1994; and a Juris Doctorate degree, *cum laude*, from Michigan State University – Detroit College of Law in 1999.

3. I was admitted to the South Carolina Bar in 1999 and I am presently a partner in the law firm of Ouverson, Guest & Carter, PA, located in Murrells Inlet, South Carolina. My primary practice is focused and devoted to the areas of estate planning, probate administration, guardianships, and conservatorships in both Horry and Georgetown counties of South Carolina.

4. Following my admission to the S.C. Bar in 1999, I obtained my LL.M. in Taxation from Georgetown University Law Center, in Washington, D.C. and thereafter entered the private practice of law in March of 2005.

5. In March of 2007, I was appointed to serve as an Associate Probate Judge by the Honorable Deirdre W. Edmonds, former Probate Judge for Horry County, and served in said role as Associate Probate Judge in Horry County from March 2007 to January 2015.

6. During my tenure as an Associate Probate Judge, I estimate that I presided over more than eight hundred (800) hearings and trials, including contested and non-contested matters (primarily guardianship and conservatorship cases) before the Horry County Probate Court.

7. I personally know Stephen P. Mantell and I am familiar with his companies, CDM Corporation and Guardian Fiduciary Services, both from serving in my role as Associate Probate Judge in Horry County and in my private practice of law.

8. As a practicing attorney in both Georgetown and Horry counties, and to the best of my knowledge, CDM Corporation and Guardian Fiduciary Services, have provided professional services and competent work to the residents and citizens of Horry and Georgetown Counties, including clients of my firm.

9. Based upon my professional work experience and in accordance with the laws of the State of South Carolina, South Carolina Probate Courts will typically seek an individual or company with suitable experience and proven accountability to serve in situations where a guardian, conservator, attorney-in-fact, or personal representative is necessary and/or required. I am aware, and it has been my experience, that Probate Court Judges in different counties of South Carolina exercise discretion in accordance with the law when selecting the appropriate fiduciary.

10. None of the roles, as set forth in Paragraph 9 above, involve a trust, trustee or trust company.

11. To my knowledge, both Stephen Mantell and CDM Corporation by and through its representative, have each been selected, appointed, and approved to serve in such roles and currently serve in those roles as set forth in Paragraph 9 above.

12. During my professional career and to the best of my knowledge and experience, the majority of cases to which CDM Corporation, by and through its representative, Stephen Mantell, has been appointed, involve Probate Court appointments for vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those persons whom have no relative or family member that is willing, capable, or qualified to serve. More often than not, these challenging difficulties overlap.

13. It has been my experience that if an individual is appointed in the role of conservator or personal representative then the court will require a bond to be posted which must be paid from available funds of the protected individual or the decedent's estate. However, it has also been my experience that if a company is appointed by the court to serve in the role of a fiduciary, then liability insurance for the company is required and the company pays the cost for this insurance; not the estate of the protected individual or decedent.

14. From the information provided to me regarding the Board of Financial Institutions application fee of $15,000.00 and supervisory fee of $19,600.00 annually, and in my experience, these costs could be prohibitive for many companies serving in fiduciary roles and would create a financial hardship for the company.

15. All fiduciaries appointed by a probate judge in South Carolina who serve in the role of guardian, conservator, and personal representative, are directly accountable to that certain court. According to the specific appointment, an Inventory and Appraisement, annual accounting(s), and/or other reports, which include financial plans and annual reports of a

Guardian, are required to be filed, reviewed and approved by the probate courts in a timely manner.

16. It has been my experience that these reports, or series of reports, are closely overseen, monitored, and reviewed by the courts, and any missing, incomplete, inconsistent, or incorrect information is addressed by the court directly with the fiduciary in a timely manner.

17. The ongoing authority and jurisdiction of the probate court applies to the roles of guardian, conservator, agents appointed pursuant to powers of attorney (both healthcare and financial matters), special administrators and to personal representative(s) in an estate.

18. Any complaint by an interested person, a beneficiary, a protected individual or a named party can be addressed directly and relatively quickly in probate court, and should the foregoing individuals or parties not achieve a response satisfactory to him or her, the person can appeal the decision of the probate court to the circuit court.

19. I have no information about the Board of Financial Institutions' ability to similarly respond because, to my knowledge, no such authority or jurisdiction has ever been claimed.

20. In my experience, the jurisdiction of the probate court operates effectively to oversee and regulate the appointments and responsibilities of guardians, conservators, attorneys-in-fact, and personal representatives.

FURTHER AFFIANT SAYETH NOT.

Dundee W. Carter

Dundee W. Carter

SWORN to before me

this 8th day of June, 2021.

Notary Public for South Carolina

My Commission Expires: 01/28/2030

1995 WL 803721 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 2, 1995

Re: Informal Opinion

***1** The Honorable John C. Land, III
Senator, District No. 36
Drawer G
Manning, South Carolina 29102

Dear Senator Land:
You have requested an informal opinion regarding the eligibility of foreign corporations to serve as trustees under trusts created by corporate and individual citizens of South Carolina. In this instance, the foreign corporation is a trust company desiring to have one of its trust companies serve as Trustee for employee benefit trusts for South Carolina companies as well as Trustee of personal inter vivos Trusts created by residents of South Carolina.

The general law in this area may be summarized as follows:
[e]xcept as specific statutes forbid appointment of any foreign fiduciary corporation as trustee of an inter vivos trust, there appears to be no basic public policy reason why such an appointment should not be valid, although a court, in its discretion, may refuse to make such an appointment under the circumstances of a particular case.

82 A.L.R.2d 946. ("Eligibility of foreign corporation to appointment as trustee of inter vivos trust"). The Annotation particularly references the decision of Ingalls v. Ingalls, 263 Ala. 106, 81 So.2d 610 (1955) which is described therein thusly:
[h]olding that a national bank located in Tennessee had the same authority to act as trustee as did competing Tennessee state banks, the court ... said that in determining whether such a bank could validly be appointed cotrustee of a trust of property the situs of which was in Alabama, the questions to be answered were whether Tennessee law permitted Tennessee banks to act as trustee outside of that state, and whether Alabama law permitted foreign banks to act as trustees in Alabama. It was concluded that the Tennessee statute specifically granted such authority, and that a provision of the Alabama statute that courts might either remove a nonresident trustee or require him to give bond to protect the interests of the parties indicated that a nonresident was permitted to act as trustees of a trust.

Supra at 947. The same view is stated in the Restatement of Trusts § 96, 2(g) [a corporation organized under the laws of one state and having capacity to act as trustee by the law of the state has capacity to so act in another state unless it is against the policy of the latter state to allow such a corporation to act as trustee]. Accord, 76 Am.Jur.2d, Trusts, § 246; 90 C.J.S., Trusts § 208. And it is recognized in Bogert, Trusts and Trustees, § 132, that "[t]here would seem to be little doubt of the ability of state X to make a corporation of state Y a trustee of a valid trust by inter vivos acts." (emphasis in original). Thus, the answer to your question turns upon whether the laws of South Carolina in any way prohibit the appointment of an out-of-state trustee with respect to an inter vivos trust. As we have located no South Carolina case law which specifically addresses this question, an examination of the relevant statutory provisions is in order.

***2** S.C. Code Ann. § 34-21-10 (The Trust Statute) provides as follows:
[n]o corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. Before any such application shall be approved, the Board shall make an investigation to determine whether or not the applicant has complied with all the provisions of law,

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whether in the judgment of the Board the applicant is qualified to conduct such a business and whether the conduct of such business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

Clearly, nothing in this statute expressly makes any reference to any requirement that a trustee be a South Carolina chartered corporation.

S.C. Code Ann. § 34-1-70 must also be considered however. Such provision states:
[n]o bank building and loan association savings and loan association, or savings bank may be granted a charter by the Secretary of State unless and until the Board [of Financial Institutions] has approved the application in writing. No branch bank, branch building and loan association, branch savings and loan association, or branch savings bank may be established without the approval in writing of the Board. Before any application for the incorporation of a bank, building and loan association, savings and loan association or savings bank, or the establishment of a branch thereof may be approved, the Board shall make an investigation to determine whether or not the applicants have complied with all the provisions of law, whether in the judgment of the Board they are qualified to operate the institution and whether the establishment of the bank, building and loan association, savings and loan association, or savings bank or a branch thereof, would serve the public interest, taking into consideration local circumstances and conditions at the place where it proposes to do business. A remote service unit as defined in § 34-28-30 is not considered a branch of a bank, building and loan association, savings and loan association, or a savings bank and is not subject to any of the provisions of this section applicable to branch applications. (emphasis added).

This Office has previously concluded that "[i]n order to conduct any banking activities in this State, the banking entity must be granted a charter which is granted only after the State Board of Bank Control has approved a written application therefor." Op. Atty. Gen., April 17, 1981.

***3** There is a "well-defined distinction" recognized in the general law between conducting banking activities and conducting a trust business or trust company. See, 9 C.J.S., Banks and Banking, § 1044. There, it is stated:
[t]his distinction rests, for the most part, upon the differences in the purpose or character of business for which the respective types of institutions or corporations are organized and in the nature of the powers and privileges customarily conferred upon them by the provisions of their charters. It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts, rather than carry on the functions of banking.

This Office has also affirmed this distinction, concluding that a corporation chartered as a trust company is not authorized to do banking. Op. Atty. Gen., June 29, 1959. See also § 34-1-10 (definition of "bank") [1] ; 10 Am.Jur.2d, Banks, § 1. Comprehending the well-settled difference between banking activities and a trust company and comparing §§ 34-21-10 with 34-1-70, it thus cannot be implied that a trust company must be a chartered South Carolina corporation in order to administer an inter vivos trust.

A third statute for consideration is contained in the Probate Code, § 62-7-207. That enactment provides:
(a) [n]o corporation created by another state of the United States or by any foreign state, kingdom, or government and no corporation created under the laws of the United States and not having a place of business in the State of South Carolina shall be eligible or entitled to qualify, serve or hold title to property in this State as testamentary trustee of an estate of any person domiciled in this State at the time of his death, whether the decedent shall die testate or intestate, except, however, such foreign corporations may act as testamentary trustee in this State if .... [upon fulfillment of certain conditions].

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By its specific terms, this statute deals only with service as a testamentary trustee, but does not mention inter vivos trusts.

Certain rules of statutory construction are applicable here. In seeking legislative intent it is proper to consider cognate legislation. Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951). Different statutes in pari materia, though enacted at different times and not referring to each other should be construed together as one system and explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). Moreover, statutes dealing with the same subject matter should always be reconciled, wherever possible so as to render all fully operable. Bell v. S.C. State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). While not conclusive, it is proper in construing a statute to consider legislation dealing with the same subject matter to assist in construction. Hartford Acc. & Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). Implied repeals or amendments are not favored. State v. Thrift, 440 S.E.2d 341 (1994).

***4** When reading together the three statutes, referenced above, (the "Trust" Statute, the "Bank" Statute and the "Probate Code"), it is evident that South Carolina law does not expressly prohibit the appointment of an out-of-state trust company as trustee of an inter vivos trust. For example, in the title to the Probate Code (Act No. 539 of 1986), the General Assembly enumerated the statutes which the Probate Code was designed to modify, amend or repeal. Section 34-21-10, the Trust Statute, was not listed therein. Nowhere in Chapter 21 of Title 34, the chapter entitled "Banks and Corporations Doing Business" is there any suggestion, annotation or reference that indicates that either the Legislature or the Code Commissioner thought that the Trust Statute could not stand side by side the Probate Code.

Moreover, the fact that the Probate Code specifically prohibits a foreign corporation from serving as a testamentary trustee, except in certain instances, but does not mention inter vivos trusts, and the fact that the Trust Statute does not expressly prohibit a foreign corporation from serving as trustee, whereas the Bank Statute does provide that a charter requirement is imposed for purposes of banking, are, in my judgment, significant. The generally recognized doctrine of expressio unius est exclusio alterius would be applicable here. The doctrine requires that the enumeration of particular things excludes the idea of something else not mentioned. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). See also, § 62-3-203(e)(3) (foreign corporation not eligible to serve as personal representative of estate). In a recent opinion, this Office determined that the expression of specific requirements in a statute indicated that the General Assembly did not intend to impose other requirements. Op. Atty. Gen., January 10, 1995. Furthermore, courts have held that statutes specifically relating to testamentary gifts do not apply to inter vivos gifts. See, In Re Estate of Posey, 214 A.2d 713 (N.J. 1965) [Statute of Wills not applicable to inter vivos gifts]. The fact that the statute is silent as to inter vivos trusts cannot lead to the inference that an out-of-state trust company is rendered ineligible to serve as trustee.

Significant also is the fact that apparently at one time there existed specific statutory provisions that expressly required a trust company to be a South Carolina corporation except where the sole business of the trust within South Carolina was the lending of money on real estate therein or when the business of said foreign corporation or trust company is not the operation of a trust or banking business in South Carolina. See, 1942 S.C. Code Ann. § 7904. Sections 7878 through 7904 were repealed by 1951 Act No. 346.

In addition, Professor Coleman Karesh, long renowned as the expert of South Carolina trust law, concluded in his treatise on Trusts that "[t]here is no restriction on a foreign corporate Trustee acting under an inter vivos Trust ...." Karesh, Trusts 18 (1977). Professor Karesh apparently did not deem that the silence of the predecessor to § 62-7-207, virtually identical to its present form, constituted a prohibition as it relates to inter vivos trustees. I have recently spoken to another trust expert in this area and he is in agreement with Professor Karesh's conclusion and knows of no provision which has altered it.

***5** Moreover, § 15-9-440(3) offers further support. That provision states that "[w]hen there is no resident Trustee, the nonresident Trustee of an inter vivos Trust shall be deemed to have consented to the service of any Summons ... when the Trust was created under laws of this state ..." (emphasis added). The statute does not limit its scope to natural persons; thus, by implication, this provision contemplates that a foreign corporation can serve as trustee for an inter vivos trust. Finally, this construction is supported by the fact that courts, with increasing frequency, have held that a statute which unreasonably

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discriminates between in-state and out-of-state corporations for purposes of appointment as trustee is violative of the federal and state constitutions. See, Dunn v. N.C. Nat. Bank, 276 S.C. 202, 277 S.E.2d 143 (1981); Amer. Trust Co. v. S.C. State Bd. of Bank Control, 381 F.Supp. 313 (1974, D.C.S.C.); Munford v. MacLellan, 258 Ga. 679, 373 S.E.2d 368 (1988), citing Bogert, supra at § 132.

CONCLUSION

Applying the well-recognized rule that unless a specific statute forbids the appointment of a foreign fiduciary corporation (trust company) as trustee of an inter vivos trust, such appointment is generally not prohibited, it is my opinion that no South Carolina statute or decision prohibits that appointment. [2]

While I am of the opinion that the various statutes, discussed above, do not render an out-of-state trust company ineligible to serve as trustee of an inter vivos trust, additional comments are in order. Clearly, the General Assembly intended that a foreign corporate inter vivos trustee would be subject to regulation by the State of South Carolina. S.C. Code Ann. § 34-21-10 provides that, prior to conducting a trust business in this State", a corporation, partnership, etc. shall make a written application to the State Board of Bank Control and receive written approval. The Section further directs the Board to conduct an investigation to determine whether or not the applicant has complied with all provisions of law, whether in the judgment of the Board the applicant is qualified to conduct such business and whether the conduct of such a business would serve the public interest. In short, the trust business, like banking, is subject to pervasive control. Am. Trust Co., Inc. v. S.C. State Bd. of Bank Control, supra%u.

Therefore, within the parameters of law that an out-of-state corporation is not rendered ineligible to serve as inter vivos trustee simply by virtue of its status as a foreign corporation, the Board is, nevertheless, empowered to establish reasonable, non-discriminatory guidelines and/or requirements that a foreign trustee must meet. Such requirements could include, for example, those very same requirements which § 62-2-207 imposes upon testamentary trustees. Furthermore, conducting a "trust business" in South Carolina presumably constitutes "transacting business" in the State for purposes of § 33-15-101 which requires that the foreign corporations register or obtain a Certificate of Authority from the South Carolina Secretary of State as well, providing additional oversight to protect the citizens of South Carolina.

***6** This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am
Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

Footnotes

1 Statutory definitions vary for various purposes. For purposes of the relationship with the Federal Deposit Insurance Company, a "banking institution" includes a trust company. 12 U.S.C. § 1813(a)(2) provides that a "state bank" includes a "trust company", but only if it is engaged in the business of receiving deposits other than trust funds.

2 For purposes of this letter, I assume that a "pour-over" provision in a will is not involved, wherein a trust is created thereby.

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1996 WL 93998 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 9, 1996

Re: Informal Opinion

***1** The Honorable Louie A. Jacobs
Commissioner of Banking
Board of Financial Institutions
1015 Sumter Street, Room 309
Columbia, South Carolina 29201

Dear Commissioner Jacobs:
You have enclosed a letter with attachments from the Chairman of the Colonial Trust Company of Spartanburg requesting clarification concerning that company's status as a trust company. Such letter provides a background regarding activities of the company over the years and reads in pertinent part:
[a]s you can see from the copy of our charter that I left with you, the company started operations in 1913. The charter is very broad, covering several types of business. Indeed, this may be part of the confusion, in that the charter is not a "standard" or "normal" one for a trust company.

There has been continuous trust business conducted since the company's inception. At present, our oldest trust dates back to a lady who died in 1923. Probably our second oldest one is one for which we just completed our 60th accounting. After World War II, the company worked with the Veterans Administration in helping veterans who were receiving pensions or disability benefits but were judged incapable of handling them. A few (15-20) of these conservators remain today, but most of the World War II veterans have died.

During much of its history, the company operated a large general insurance agency. The insurance business was sold in 1970. From then until 1989, the company was fairly inactive, with just the conservatorships, some trusts, and a couple of estates for the Cleveland family, who owned the company. We bought the company in 1989 and began to build it up to the point we are today.

Our focus has been on two types of business - fee based asset management; and trust and estate administration. By far the largest portion of our business comes from asset management, but our trust and estate activity is growing. Currently, we are serving as Trustee for assets amounting to around $15.5 million, and we manage an additional $190 million. We choose not to custody assets "in house"; but rather use major brokerage firms and banks for that service. This applies both to our trust assets and our managed assets.

You state that "[w]e have recently become aware of this company's trust activities and request your opinion as to whether Colonial is subject to regulation and direct supervision by the Board as other trust companies approved by the Board."

Law / Analysis

S. C. Code Ann. Sec. 34-21-10 provides:
[n]o corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. Before any such application shall be approved, the Board shall make an investigation to determine whether or not the applicant has complied with all the provisions of law,

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whether in the judgment of the Board the applicant is qualified to conduct such a business and whether the conduct of such a business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

***2** Thus, the issue raised here is whether the company in question was "actively engaged in conducting a trust business in this State on January 1, 1972 ... ." If so, by the literal mandate of the statute, that company is not "required to make the application and receive the approval" of the State Board of Bank Control.

The phrase "actively engaged in conducting a trust business" is not defined by the statute or, specifically, by any other statute in the Code of which I am aware. Neither is the term "trust business" defined therein or elsewhere in the Code, to my knowledge.

However, courts have defined a "trust business" or a "trust company" according to the common and ordinary definition of those terms. In Carney v. Sam Houston Underwriters, 272 S.W.2d 942, 946 (Tex. Civ. App. 1954), the Court stated:
[w]e believe that a corporation in the trust business and lawfully advertising itself as a trust company is a trust company just as much as a company in the lumber business is a lumber company. This accords with the ordinary conception of a trust company as being one authorized to take and administer trusts. (emphasis added).

In Goss and Hamlyn Howe v. State, 285 P.2d 428, 431 (Okl. 1955), the Court cited Websters New International Dictionary (2d ed. unabridged) defining a "trust company" as "any corporation found for the purpose of acting as trustee." An important indicia is also whether the business holds itself out to the public as a "trust company." Carney v. Sam Houston Underwriters, supra. It is also said that a "trust company" is
a corporation formed for the purpose of taking, executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc.

The foregoing definitions are consistent with those set forth in Title 34 of the Code. See, e.g. Sections 34-21-20 through -70; Section 34-21-210 (1) [definition of "trust institution"]; Section 34-21-220 et seq ["common trust funds"].

In addition, Section 34-21-10 requires that the entity have been "actively engaged" in the trust business on January 1, 1972 to be "grandfathered" pursuant to the statute. Courts have held that the word "actively" is used to mean "active" as opposed to "passive" or as opposed to "inactive" and denotes taking an active part and does not mean "brisk" or "lively". Carson Estate Co. v. McColgan, 130 P.2d 202, 208 (Cal. 1942). The phrase also signifies "transacting or carrying on" the business. Alabama Fuel and Iron Co. v. Ward, 194 Ala. 242, 69 So. 621, 623 (1915).
In the Carson case, the Court reasoned that the term "doing business" which was statutorily tied to "actively engaging" in any transaction for profit or gain, meant the following:
taken to denote "brisk", "lively," "characterized by frequent activity," as in speaking of an "active market." If taken in that sense, the statutory definition is virtually rendered meaningless and impossible of any practical application, since the Legislature has therein employed the term "transaction" in the singular. Under the circumstances, "actively" must there be taken to mean "active" as opposed to "passive" or "active" as opposed to "inactive." Thus, "actively" as used in Section 5, supra denotes "taking a active part in any transaction," "actively engaging in any transaction."

***3** Therefore, as I read Section 34-21-10, if a corporation or entity was transacting or carrying on trust business, i.e. taking, accepting, administering and executing trusts on January 1, 1972, the "grandfather" provision contained therein would be

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triggered. Section 34-21-10 does not require any particular level of transacting trust business in order to be entitled to be "grandfathered."

Of course, the final determination of whether a company qualifies for the "grandfather" exception is with the Board of Bank Control. Such a decision requires the determination of facts which is beyond the scope of an opinion of this Office. The Board should make such determination based upon the criteria set forth herein.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am
Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

1996 WL 93998 (S.C.A.G.)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master in Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents

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RECORD ON APPEAL – VOLUME II

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	BEFORE THE MASTER IN EQUITY OF GEORGETOWN COUNTY
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **PLAINTIFF'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION**

TO: JAMES D. MYRICK, ESQ., ATTORNEY FOR DEFENDANTS:

PLEASE TAKE NOTE that, pursuant to Rule 59(e), Plaintiff Board of Financial Institutions hereby moves before this Court for partial reconsideration, alteration, or amendment of the Court's Order regarding the parties' Motion for Summary Judgment dated November 3, 2022, attached as EXHIBIT A. This motion is made on the following grounds:

I. BOFI alone licenses and regulates non-exempt persons conducting trust business, and the Court erred in finding that the Probate Court has authority to "regulate" such persons, or to appoint unqualified persons like Defendants to fiduciary positions.

II. Even if the Probate Court had the authority to appoint unqualified persons to fiduciary positions, this Court erred in failing to hold that Defendants, who are non-exempt, unlicensed persons, are prohibited from accepting and acting under such appointments.

III. The usual and customary meaning of "trust business" includes serving in "non-trustee" fiduciary roles, and the interpretation applied by the Court erroneously renders numerous provisions of the South Carolina Code meaningless.

.

IV. To the extent that the term "trust business," as used in S.C. Code Ann. § 34-21-10, is ambiguous, the Court erred by failing to give deference to BOFI's published guidance in interpreting that term.

V. The Court must not consider the testimony of Dundee W. Carter or Julian W. Walker, Jr., as their testimonies purport to be that of "legal experts" and are irrelevant and inadmissible.

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BACKGROUND

Plaintiff Board of Financial Institutions ("BOFI") brought this declaratory judgment and permanent injunction action against Defendants, alleging that they had conducted and continued to conduct unlicensed trust business by serving as trustee, guardian, conservator, personal representative, and/or agent, any or all of which constituted violations of S.C. Code Ann. § 34-21-10. That Section, which requires non-exempt persons to obtain BOFI's written approval prior to conducting trust business, provides as follows:

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board. Before any such application shall be approved, the Board shall make an investigation to determine whether or not the applicant has complied with all the provisions of law, whether in the judgment of the Board the applicant is qualified to conduct such a business and whether the conduct of such a business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

Defendants counterclaimed, seeking declaratory judgment that "trust business" means serving as a trustee of a trust instrument, and that serving in other "non-trustee" fiduciary roles did not constitute trust business, and could not be regulated by BOFI. Defendants also declared in their Answer, dated December 11, 2020, that they had withdrawn or were in the process of withdrawing from all trusteeships. This representation was false. As recently as January 5, 2022, Defendant CDM Corporation pursued a trustee appointment in the Georgetown Probate Court, and

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represented to that court that CDM could legally serve in such capacity.[1] (Exhibit B - CDM Filing Seeking Trustee Appointment).

Defendants moved, and BOFI consented, for reference to the Georgetown County Master in Equity. Following discovery, the parties filed motions for summary judgment. The undisputed evidence and admissions indicated that Defendants have served as trustee, guardian, conservator, personal representative, and power of attorney without BOFI's prior written approval.

The Court ruled, without oral argument, partially granting each party's motion. The Court granted BOFI's summary judgment motion as to Defendants' actions in serving as a trustee of a trust instrument, but denied BOFI's contention that the remaining "non-trustee" fiduciary roles constituted trust business as contemplated in S.C. Code Ann. § 34-21-10. The Court granted Defendants' summary judgment motion as to the remaining fiduciary roles, holding that "non-trustee" roles such as conservator, guardian, personal representative, and agent do not constitute trust business, and furthermore are "regulated by the probate courts."

BOFI now moves this Court to reconsider its partial denial of BOFI's summary judgment motion, and its partial granting of Defendants' summary judgment motion.

STANDARD

Rule 59(e), SCRCP allows a party to move for an order altering or amending a judgment. Pursuant to Rule 59, upon motion, a court may, in its discretion, "amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

[1] Despite Defendants' supposed concession that their trusteeships constituted trust business, and representations to this Court that it ceased all trustee activity, Defendant CDM tells the Probate Court in January 2022 that this Court "has not determined that CDM Corporation or Stephen Mantell may not serve as Trustee…" and asks the Probate Court to "confirm the installation of Stephen Mantell or CDM Corporation as the Second Successor Trustee…" Id. at ¶11-12.

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ARGUMENT

I. BOFI ALONE LICENSES AND REGULATES NON-EXEMPT PERSONS CONDUCTING TRUST BUSINESS, AND THE COURT ERRED IN FINDING THAT THE PROBATE COURT HAS AUTHORITY TO "REGULATE" SUCH PERSONS, OR TO APPOINT UNQUALIFIED PERSONS LIKE DEFENDANTS TO FIDUCIARY POSITIONS.

BOFI alone licenses and regulates trust business in South Carolina, as mandated by S.C. Code Ann. §§ 34-21-10 and 20, and various other provisions of the Banking Code (Title 34). This regulatory oversight is entirely consistent with, and indeed supports the provisions of the Probate Code (Title 62) and the jurisdiction of the Probate Court in appointing fiduciaries.

The Court incorrectly finds that the Probate Code stands alone, voiding any other statute or provision of law which may interact with the jurisdiction of the Probate Courts.[2] This is not a proper application of statutory construction. When the rules of statutory construction are applied, BOFI's regulation of trust business coincides perfectly with the Probate Court's jurisdiction.

"Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88–89 (2000). "It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Justice v. Pantry, 330 S.C. 37, 43–44 (Ct.App.1998) (quoting State v. Hood, 181 S.C. 488, 491 (1936)).

a. The Probate Court does not have statutory authority to regulate trust business, nor does its jurisdiction void or negate any provision of the Banking Code.

It is the statutory duty of BOFI to regulate trust business. The Probate Court has jurisdiction to hear and preside over matters concerning fiduciaries, in accordance with its own

[2] Defendants' Answer and Counterclaim fails to assert any claim or allegation that they seek Declaratory Judgment concerning the authority of the Probate Court, or any supposed conflict between the jurisdiction of the Probate Court and the regulatory duties and powers of BOFI.

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statutory authority, but it has no regulatory authority. This Court errs by making the unsupported declaration that the existence of the Probate Code or the Probate Courts invalidates all provisions of the Banking Code corresponding to Probate Court appointments.

The Probate Court is created by and derives its authority from statute, and it must act in accordance with the South Carolina Constitution and the laws of this State. The Supreme Court of South Carolina has stated "…we have definitively recognized that the probate court is not a constitutional court." Judy v. Judy, 393 S.C. 160, 169 (2011). "[T]he probate court has only such jurisdiction as vested in it by the General Assembly." Id. citing Davis v. Davis, 214 S.C. 247 (1949). This concept is derived directly from the South Carolina Constitution, which states that "Jurisdiction in matters testamentary and of administration ... shall be vested as the General Assembly may provide, consistent with the provisions of Section 1 of this article." S.C. Const. art. V, § 12. "Thus, the extent of the probate court's jurisdiction is defined by our legislature." Judy, 393 S.C. at 169 (2011).

The Probate Court does indeed have jurisdiction over "protective proceedings and guardianship proceedings," (S.C. Code Ann. § 62-1-302(a)(2)(i)), and "estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons…" (S.C. Code Ann. § 62-1-302(a)(1)). The Probate Code defines "proceedings" as "actions at law and suit in equity."

The licensure and regulation of financial businesses, however, is not a "proceeding." Nothing in the Probate Code indicates that trust business or fiduciaries are "overseen" or "regulated" by South Carolina Probate judges.[3] The Probate Court of each county addresses

[3] In fact, even in the individual proceedings over which the Probate Court holds jurisdiction, the court is expressly excused from such oversight: "Nothing herein shall require the court to oversee the plan of care [implemented by a

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individual matters which are properly brought before it. Regulating trust business is an executive branch function, not a judicial one.

Likewise, BOFI has never claimed jurisdiction to preside over any probate "proceeding," "contest," "construction," or "determination." S.C. Code Ann. § 62-1-302(a). To the contrary, BOFI's authority to regulate the safety and soundness of operations of non-exempt persons conducting trust business is statewide, and is not predicated upon individual "proceedings" or "determinations," nor is its jurisdiction limited by subject matter, controversy, or by county.

Moreover, a Probate Court lacks the authority to examine or investigate any person or entity, whereas BOFI's initial licensing investigations and subsequent examinations of trust companies are rigorous and comprehensive. In the course of a regular trust company examination, BOFI assesses capability of management, adequacy of operations and internal controls, earnings and capital adequacy, compliance with laws, accepted standards of fiduciary conduct, and governing instruments and directives; and asset management. Green Aff. ¶4; see also FDIC, "Trust Examination Manual," fdic.gov/regulations/examinations/trustmanual/.

There is good reason for BOFI's regulation of trust business in this manner. In the present case, Stephen Mantell, the principal of both CDM Corporation and Guardian Fiduciary Services, LLC, has sought and accepted Probate Court appointments for numerous individuals, in the courts of multiple counties, before multiple Probate Judges, utilizing the names and corporate veils of both Defendants, as well as doing business as "Senior Helpers" (Exhibit C – Appointment of Mantell of Senior Helpers) ,[4] and potentially other corporate entities or names (Exhibit D - Mantell

guardian]." S.C. Code Ann. § 62-5-309(B). "Nothing herein shall require the court to oversee or approve the conservator's investment choices." S.C. Code Ann. § 62-5-414(B).

[4] Out of respect for the ward and parties involved in that case, BOFI has redacted significant portions of this Exhibit; however, BOFI will provide an unredacted copy for the Court if it wishes to review the original document.

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Secretary of State Records). Recently, Defendants have disclosed that they have been acquired by a Michigan-based entity, WWWB Trustees, LLC.[5] (Exhibit E - Def. Resp. to Interrog.).

The totality of the operations of these various entities— across corporate names, county, judge, and matter— is simply not cognizable by the Probate Court, or by the principals, wards, or the families to whom Defendants advertise their services. However, BOFI's licensure, regulation, and examination of these entities would ensure that Defendants' fiduciary operations are undertaken with safety, soundness, propriety and fidelity.

Indeed, principals, wards, and their families are protected, and the Probate Court's work is aided, by BOFI's regulation of these entities.

Probate Courts have jurisdiction over individual proceedings or determinations related to a fiduciary, but do not have regulatory authority over trust business. The Court erred in finding that BOFI does not regulate the non-trustee fiduciary roles and does not have regulatory authority over these non-trustee fiduciaries "[b]ecause these roles are codified in the Probate Code and are regulated by the probate courts." BOFI asks this Court to amend its Order accordingly.

b. The General Assembly gave BOFI the power to license or "qualify" non-exempt persons to serve in fiduciary roles, as a prerequisite to Probate Court appointments.

The Banking Code is the more specific statute concerning persons serving in fiduciary roles, and the clear rules of statutory construction dictate that it must be considered an exception to or qualifier of the Probate Code. The Banking Code works hand-in-hand with the Probate Code by establishing BOFI's authority to license non-exempt persons conducting trust business as a prerequisite for Probate Court appointments.

[5] The Michigan Office of Banking has confirmed that WWWB, LLC (also known as Waterway, Wilholt, Worfel & Bronsink, LLC) is prohibited from acting as fiduciary in Michigan.

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"Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." Capco of Summerville, Inc. v. J.H. Gayle Const. Co., 368 S.C. 137, 142 (2006).

The Probate Code defines a "person" broadly, to include "an individual, corporation… limited liability company… or any other legal or commercial entity." S.C. Code Ann. § 62-1-201(32). A "person" may serve as a trustee (S.C. Code Ann. § 62-7-102(a)(1)(i)), a guardian (S.C. Code Ann. § 62-5-308), a conservator (S.C. Code Ann. § 62-5-408), a personal representative of an estate (S.C. Code Ann. § 62-3-203), and an agent (S.C. Code Ann. § 62-8-102).

A "person" must be qualified to be appointed as a fiduciary. S.C. Code Ann. § 62-3-103 provides that, to serve as personal representative, a person must "be appointed by order of the court, *qualify*, and be issued letters." (emphasis added). In appointing a guardian and conservator, "the court shall consider persons who are *otherwise qualified*…" S.C. Code Ann. §§ 62-5-308(A) and 62-5-408(A) (emphasis added). These qualifications are not defined in the Probate Code; however, by referencing them, the Probate Code acknowledges that more specific statutes regarding qualifications exist elsewhere in the South Carolina Code or case law.

The Banking Code establishes some of those specific qualifications, by prohibiting non-exempt persons from "*qualifying* and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity," without BOFI's prior approval. S.C. Code Ann. § 34-21-10. Thus, the Banking Code addresses the qualification of non-exempt persons serving in fiduciary appointments "in a more specific and definite manner," and therefore must be "considered an exception to, or a qualifier of, the general statute and given such effect." Capco of Summerville, 368 S.C. 137, 142 (2006).

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The Banking Code directly acknowledges and incorporates the Probate Court's general power of appointment, while also establishing BOFI's specific oversight of the qualifications for a trust company to serve under such a court appointment. S.C. Code § 34-15-10 provides that entities with BOFI's approval to conduct trust business must have at least $250,000 in business capital before they can qualify for appointment by the Probate Court:

> …a **banking corporation or trust company** with at least two hundred fifty thousand dollars total unimpaired capital **may be appointed executor** of a will, codicil, or writing testamentary, administrator with the will annexed, **administrator of the estate of any person**, **receiver**, **assignee**, **guardian** or **trustee** under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control **by the court having jurisdiction of the appointment** as a **legally qualified person**…

(emphasis added). This Section sets out the specific requirements for persons conducting BOFI-approved trust business to be "legally qualified" for appointment as personal representative, guardian, conservator (i.e. "administrator of the estate of any person"), or trustee, while also acknowledging that the Probate Court has "jurisdiction of the appointment." Id. Section 34-15-10 confirms that BOFI's licensure is intended to serve as a "qualifier of" the Probate Code's provisions regarding fiduciary appointments because the licensure "deals with the identical issue in a more specific and definite manner." Capco of Summerville, 368 S.C. 137, 142 (2006).

The General Assembly intended, and the rules of statutory construction demand, that the Banking Code's provisions regarding trust business must read as an exception to or qualifier of the Probate Code. BOFI asks this Court to amend its Order accordingly.

c. The Court fails to articulate what specific Banking Code statutes are voided by its ruling, and further fails toapply the appropriate construction rules in determining which statute should stand.

Even if the Banking Code and Probate Code conflicted irreconcilably, the Probate Code (including the jurisdiction of the Probate Court) and the Banking Code (including the regulatory

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powers and duties of BOFI) are both equally the law of the State of South Carolina. Accordingly, the Court must identify—or demand that the Defendants identify— with specificity exactly what statutes conflict, and how they should be resolved, in accordance with the statutory construction jurisprudence of South Carolina.

II. EVEN IF THE PROBATE COURT HAD THE AUTHORITY TO APPOINT UNQUALIFIED PERSONS TO FIDUCIARY POSITIONS, THIS COURT ERRED IN FAILING TO HOLD THAT DEFENDANTS, WHO ARE NON-EXEMPT UNLICENSED PERSONS, ARE PROHIBITED FROM ACCEPTING AND ACTING UNDER SUCH APPOINTMENTS.

Even if the Probate Court had the authority to appoint persons as fiduciaries without regard to their qualifications, S.C. Code Ann. § 34-21-10 would still prohibit non-exempt persons from accepting and acting under those fiduciary appointments without first obtaining BOFI's approval.

Much has been made regarding the authority of the Probate Courts to appoint persons to non-trustee fiduciary roles. The Court's Order inaccurately declares that "Because these [non-trustee] roles are codified in the Probate Code and are regulated by the probate courts, the Board of Financial Institutions does not control and regulate these functions." Order at p. 7. However, BOFI does not purport to regulate the Probate Court or supplant its powers. BOFI regulates the person, or more specifically, the business.

Unlicensed, non-exempt persons are prohibited from accepting fiduciary appointments, including those made by the Probate Court. "No corporation, partnership or other person shall conduct a trust business" without first "receiving written approval from the Board." S.C. Code Ann. § 34-21-10. A non-exempt person without BOFI's approval is prohibited "from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity," in the same way that a person without a medical license cannot accept a Probate Court's appointment to serve as a physician to examine an alleged incapacitated person.

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Nothing in the Probate Code requires or allows a non-exempt person to accept a Probate Court appointment without BOFI's prior approval to conduct trust business pursuant to S.C. Code Ann. § 34-21-10. A Probate Court cannot force a person to accept a fiduciary appointment. Acceptance of Probate Court appointments is voluntary and must be undertaken lawfully. A person must file a "statement of acceptance of the duties of office," in order to qualify for an appointment as personal representative. S.C. Code Ann. § 62-3-601. Likewise, a person must accept an appointment to serve as guardian (S.C. Code Ann. § 62-5-305) and conservator (S.C. Code Ann. § 62-5-411), and an agent (S.C. Code Ann. § 62-8-113(a)).

Even if the Probate Court had statutory authority to appoint an unqualified person, a non-exempt person violates S.C. Code Ann. § 34-21-10 by accepting and acting under such appointment without prior BOFI approval. BOFI's regulation of persons conducting "trust business," must be upheld and enforced by this Court. Thus, BOFI asks this Court to amend its Order accordingly.

III. THE USUAL AND CUSTOMARY MEANING OF "TRUST BUSINESS," INCLUDES SERVING IN NON-TRUSTEE FIDUCIARY ROLES, AND THE INTERPRETATION APPLIED BY THE COURT RENDERS NUMEROUS PROVISIONS OF THE SOUTH CAROLINA CODE MEANINGLESS.

The usual and customary meaning of "trust business"—which BOFI is statutorily bound to license, supervise, and regulate—includes non-trustee fiduciary activities. This interpretation gives full and proper meaning to the provisions of both the Banking Code and the Probate Code, while the narrow interpretation of trust business applied in the Court's Order renders numerous clauses and provisions of the South Carolina Code ambiguous or meaningless.

"Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation." Santee Cooper Resort v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989). "The terms must be construed

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in context and their meaning determined by looking at the other terms used in the statute." Hinton v. S.C. Dep't of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). "[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." S.C. Coastal Council v. S.C. Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

"Trust" is a word with multiple definitions, each of which applies in different contexts. Of course, there is a specific type of legal instrument called a "trust," and the Probate Code defines it well. However, the Probate Code makes no attempt to define "trust business." The Court erroneously attempts to define "trust business" using the Probate Code's definition of "trust," despite the fact that that definition clearly purports to define a legal instrument rather a type of financial business, and furthermore serves only as a definition "in *this* Code" (i.e. the Probate Code). S.C. Code Ann. § 62-1-201 (emphasis added). It is an error to shoehorn the Probate Code's necessarily specific definition of "trust" into the term "trust business" as used in Title 34.

A more fitting definition of the "trust" in "trust business" refers to the "the obligation or responsibility imposed on a person in whom confidence or authority is placed: a position of trust." www.dictionary.com/browse/trust. In the banking and financial industry, "trust business" refers broadly to this "position of trust" – the trust relationship inherent in fiduciary arrangements. In fact, Black's Law Dictionary's definition of "trust relationship" equates a *trust* relationship with a *fiduciary* relationship: "An association based on one person's reliance on the other person's specialized training; esp., FIDUCIARY RELATIONSHIP. — Also termed fiducial relationship." Black's Law Dictionary (11th ed. 2019).

The idea that "trust business" extends beyond the administration of trust instruments alone, and includes all types of fiduciary appointments, is confirmed over and over throughout State law.

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For example, S.C. Code Ann. § 34-21-10 declares no person shall conduct "trust business" without BOFI's prior approval, but then clarifies that "nothing contained in this section shall prevent a natural person… from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity."[6] Clearly, the regulation of "trust business" has implications on all of the named fiduciary roles, and not just trustee. Otherwise, the General Assembly has wasted its ink by listing them.

Similarly, S.C. Code 34-21-210(1) defines "trust institution" to include "…any trust company, authorized to act in a fiduciary capacity in this State…" And that same section defines "fiduciary" to mean "a trust institution undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent." S.C. Code 34-21-210(2). The term trust, as used in "trust company" and "trust institution," must refer to the broader "trust relationship" (i.e. fiduciary relationship) contemplated in the Black's Law definition above. Otherwise, the definitions of Section 34-21-210 are nonsensical and confounding, if not meaningless—and the effect of this Court's decision is that those words, spoken by the General Assembly, will be voided without justification.

In fact, regardless of whether the "trust" in "trust business" broadly refers to the fiduciary relationship, or specifically to the legal instrument, when "construed in context" of the South Carolina Code provisions above, one must conclude that the trust business BOFI regulates includes serving as trustee, guardian, conservator, personal representatives, and/or other fiduciary roles. Hinton, 357 S.C. at 333 (Ct. App. 2004).

[6] This language mirrors another provision of the Banking Code, which does not use the term "trust business," but establishes identical fiduciary oversight by BOFI over state savings banks. A state savings bank may, "with prior board approval, act as a trustee, executor, board, guardian, or in another fiduciary capacity." S.C. Code Ann. § 34-30-144(A)(3).

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Accordingly, BOFI asks this Court to reconsider its denial of BOFI's motion for summary judgment, and find that Defendants' "non-trustee" fiduciary activities constitute trust business which requires prior BOFI approval pursuant to S.C. Code Ann. § 34-21-10.

IV. TO THE EXTENT THAT THE TERM "TRUST BUSINESS," AS USED IN S.C. CODE ANN. § 34-21-10, IS AMBIGUOUS, THE COURT ERRED BY FAILING TO GIVE DEFERENCE TO BOFI'S PUBLISHED GUIDANCE.

The Court's Order suggests that the statutes at issue in this case are ambiguous; yet, despite this ambiguity, the Court erroneously fails to give deference to, or even consider BOFI's Policy Statement defining trust business. (Exhibit F – BOFI Policy Statement).

If the Court concludes that the definition of "trust business" must always involve a trust instrument, but cannot explain the purpose for the inclusion of the non-trustee fiduciary roles listed in the statutes governing trust business, then the Court must logically conclude that this conflict of language renders these statutes ambiguous. See e.g. S.C. Code Ann. §§ 34-15-10; 34-21-10; 34-21-210(1) and (2). In light of this ambiguity, the Court must give deference to BOFI's interpretation of these statutes.

a. The Court must give deference to BOFI's public decision and clearly articulated guidance.

BOFI, through its Board, has issued guidance which clearly defines "trust business" as used in S.C. Code Ann. § 34-21-10, et seq. The Court has erred by failing to give BOFI's interpretation the deference to which it is entitled.

"If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Sierra Club v. S.C. Dep't of Health & Env't Control, 426 S.C. 236, 256 (2019). South Carolina courts "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute [or regulation].'" Kiawah Dev. Partners,

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II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34-35 (2014) (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844 (1984)). "Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n, 310 S.C. 539, 543 (1992).

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Sweat, 379 S.C. at 374 (citing Buist v. Huggins, 367 S.C. 268, 276 (2006)).

Plaintiff is the agency responsible for approving entities to conduct a trust business in South Carolina, and supervising and examining those entities. S.C. Code Ann. §§ 34-21-10 and 20. Entities approved to conduct a trust business are "subject to rules and regulations promulgated by the Board." S.C. Code Ann. § 34-21-20.

On June 1, 2022, the Board issued a "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina." (Exhibit F). In that guidance, the Board affirms BOFI's longstanding industry and regulatory interpretation of the phrase "trust business" as used in S.C. Code Ann. § 34-21-10:

> The Board interprets the phrase "conduct a trust business" as used in S.C. Code Ann. § 34-21-10, to include acting as trustee of a trust (as defined by S.C. Code Ann. § 62-1-201(49)), executor, administrator, or personal representative (as defined by S.C. Code Ann. § 62-1-201(33)), guardian (as defined by S.C. Code Ann. § 62-5-101(9)), conservator (as defined by S.C. Code Ann. § 62-1-201(6)), managing agent (as defined in S.C. Code Ann. § 34-21-210(7)). Additionally, serving as an agent (as defined by S.C. Code Ann. § 62-8-102(1)), also constitutes conducting a trust business.
>
> The Board further interprets the phrase "conduct a trust business" to include holding oneself out as providing or offering the act of serving in these fiduciary roles to the public in South Carolina.

The Policy Statement was reviewed and approved unanimously by the Board's eleven members, nine of whom are actively engaged in financial business, and all of whom are obligated

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to "represent the best interests of the public" (S.C. Code Ann. § 34-1-20). This Policy Statement is worthy of deference, and there is no compelling reason to overturn it.

Moreover, the Policy Statement is consistent with Board actions prior to its discovery of Defendants' unauthorized trust business. For example, BOFI has entered into the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions, which is a compact between the states addressing the regulation of trust business by state banking regulators. This document defines the regulated "trust business" to include acting "pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person," and "administer[ing] in any other fiduciary capacity real or personal property." (Exhibit G, Section 1.1). Additionally, prior to the present litigation, on April 28, 2020, the Board executed a Consent Order in the matter of J. Earle Financial, LLC, finding that the company had conducted unauthorized trust business in violation of S.C. Code 34-21-10, et seq., by advertising that it "provides administrative services to trusts, that it serves as a fiduciary to administer assets in conservatorships and estates, and that it can serve as the managing agent to administer trusts," and by serving as trustee of a trust, and as personal representative of an estate. (Exhibit H).

b. The Office of Comptroller of the Currency has issued guidance that is entirely consistent with BOFI's position, defining "trust business" to include fiduciary activity beyond serving as trustee.

The Office of the Comptroller of the Currency ("OCC"), the federal regulator of financial institutions, has issued guidance stating that national banks, whether depository or not, must have "trust powers" to serve in any fiduciary capacity.

Federal law provides that the OCC may authorize a national banking corporation to serve as "trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which State banks, trust companies, or other

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corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located." 12 U.S.C. § 92a(a).

The OCC has clarified that serving in any one of these roles constitutes trust business: "A national bank that only performs one fiduciary capacity under 12 U.S.C § 92a would need trust powers." EXHIBIT I - OCC Interpretive Letter #1176, (January 2021). The OCC's interpretation of federal law is consistent with and supports BOFI's position in this case, as well as its published guidance discussed above.

c. Every State in the United States regulates "non-trustee" fiduciary activity as trust business.

Every state in the United States interprets "trust business" to include serving in the fiduciary roles of trustee, conservator, guardian, personal representative, and other fiduciary roles, and every regulator in the United States prohibits entities from serving in these roles without prior approval from the appropriate governing body.

The applicable statutes for all fifty states have been compiled, with appropriate terms highlighted for the Court's convenience, and attached to this Memorandum as Exhibit J. Despite a broad range of wording and formatting, all fifty states of the United States prohibit trust business without prior approval and continued oversight by the state's banking regulator, the conducting of which includes the fiduciary roles of trustee, conservator, guardian, personal representative of estates, and other fiduciary roles.

The unanimity among the states defining trust business beyond "trusteeship" is further confirmation that the BOFI Policy Statement is worthy of deference, and this Court must defer to BOFI's interpretation of the law applicable in this case.

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V. THIS COURT MUST NOT CONSIDER THE TESTIMONY OF DUNDEE W. CARTER OR JULIAN W. WALKER, JR., AS THEIR TESTIMONIES PURPORT TO BE THAT OF "LEGAL EXPERTS" AND ARE IRRELEVANT AND INADMISSIBLE.

To the extent that the Court relied upon the affidavit testimony of Dundee W. Carter or Julian W. Walker, Jr., which the Defendants submitted with their Motion for Summary Judgment, that testimony is inadmissible and should not be considered in rendering a decision in this matter.

The interpretation of a statute is a question of law for the court. State v. Sweat, 379 S.C. 367, 373 (Ct. App. 2008), aff'd as modified, 386 S.C. 339 (2010). "In general, expert testimony on issues of law is inadmissible." Dawkins v. Fields, 354 S.C. 58, 66 (2003) citing Askanase v. Fatjo, 130 F.3d 657, 673 (5th Cir.1997) (where the court disallowed a legal expert's opinion on whether corporate officers and directors breached their fiduciary duties because "[s]uch testimony is a legal opinion and inadmissible."); United States v. Sinclair, 74 F.3d 753, 758 n. 1 (7th Cir.1996) (commenting that Federal Rules of Evidence 702 and 704 prohibit experts from offering opinions about legal issues that will determine the outcome of a case). Expert legal testimony treads on "the trial judge's role as the sole source of the law in the trial." Carter v. Bryant, 429 S.C. 298, 314 (Ct. App. 2020).

Defendants have submitted affidavits by two attorneys, Dundee W. Carter or Julian W. Walker, Jr., which Defendants apparently purport to be experts on the law of this case. Both affidavits render legal opinions that are inadmissible as a matter of law. Although neither individual's testimony is cited in the Court's Order, there are similarities between the Order and Affidavits that suggest that the Court was influenced by this inadmissible testimony.

The relevant facts of this case are uncomplicated and stipulated-to, and there is no need for "scientific, technical, or other specialized knowledge [to] assist the trier of fact to understand the

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evidence or determine a fact in issue," as required for the qualification of expert witnesses pursuant to Rule 702, SCRE.

Accordingly, this Court should strike the affidavits of Carter and Walker from the record and declare them inadmissible as a matter of law.

CONCLUSION

In conclusion, S.C. Code Ann. § 34-21-10 plainly establishes that BOFI must license and regulate non-exempt persons prior to their conducting trust business. The trust business regulated by BOFI includes non-trustee fiduciary activity. In regulating these persons, the statutory framework confirms that BOFI does not trespass upon the jurisdiction of the Probate Court, although BOFI's approval is a necessary qualification for a non-exempt person to be appointed by the Probate Court, and to accept an appointment as a fiduciary.

Respectfully submitted,

By: s/ Shawn D. Eubanks
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Attorneys for Board of Financial Institutions

November 14, 2022
Columbia, South Carolina

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PROBATE COURT
2022JAN6PM2:29
GEORGETOWN SC

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GEORGETOWN	)	Case No.: ~~2020~~ 2021-GC-22-00037
	)	
In re: Robert K. Stahlberger Revocable Trust	)	
	)	**ANSWER OF RESPONDENTS STEPHEN MANTELL and CDM CORPORATION**
David J. Gundling, Trustee,	)	
	)	
Petitioner.	)	
	)	

Respondents Stephen Mantell (incorrectly nominated above as Steven Mantell) and CDM Corporation (collectively "Respondent"), Second Successor Trustee of the Robert K. Stahlberger Revocable Trust ("the Trust"), allege and state the following:

1. Respondent denies each and every allegation in the Petition not hereinafter expressly admitted.

2. At issue is Mr. Gundling's resignation as Successor Trustee of the Trust and CDM Corporation and Stephen Mantell's role as Second Successor Trustee.

3. Robert K. Stahlberger served as the original trustee. Upon the death of Stahlberger, David J. Gundling assumed the role as Sucessor Trustee. In the present action, David J. Gundling, now seeks a "conditional" resignation and to direct an alternate appointment of the Third Successor Trustee, skipping the Respondent, Second Successor Trustee altogether.

4. Respondent agrees with Petitioner's allegation that the terms of the Trust Agreement names CDM Corporation and Stephen Mantell as Second Successor Trustee in the event of resignation by Mr. Gundling, providing upon such resignation to wit: "then CDM Corporation, by and through its Representative Stephen P. Mantell (provided that Stephen P. Mantell, individually, is actively personally serving as administrator of the Trust) shall serve as Trustee . . . ." Article 4, Section C.

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5. Respondent further responds that the Trust Agreement requires in Article 4, Section C that the Trust imposes a "requirement of posting a trustee bond or surety in the amount necessary to fully protect the Trust Estate.

6. Respondent has acquired and posted such a bond in the amount of Three Million Five Hundred Thousand and 00/100, as evidenced by the "Bond of Trustee" issued by Liberty Mutual Surety on December 8, 2021 and attached as **Exhibit A.**

7. On information and belief, Mr. Gundling's resignation from his role as Trustee is due to the temporary suspension of his law license. A copy of the December 2021 suspension is attached hereto as **Exhibit B.**

8. In response to the request for "Conditional Resignation of Successor Trustee" David J. Gundling ("Petitioner's Ex. A"), Respondent avers Mr. Gundling's resignation may not be contingent nor conditioned upon any factor created and superimposed by Mr. Gundling. To make the resignation conditional would supplant the written wishes of the settlor of the trust with those of Mr. Gundling. Further, because the terms of the Stahlberger Trust control, Stephen Mantell now serves as Trustee and Gundling's Petition herein is simply a masked attempt to remove Mantell as Trustee, subject to all the legal requirements of such action.

9. In further reference to Petitioner's Exh. A, Mr. Gundling's position as Trustee exists exclusively through the terms of the Trust Agreement. Mr. Gundling possesses no power to veto or otherwise decide who will serve as the Second Successor Trustee in his absence. The intent of the settlor, stated clearly in the Trust Agreement, directs that Stephen Mantell and/or his company CDM Corporation shall be Second Successor Trustee.

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10. Upon information and belief, Respondent directs the Court to the deficient record keeping of Mr. Gundling as further evidence that his resignation should be accepted without condition. Any attempt to circumvent the settlor's intent in the appointment of the Second Successor Trustee could prevent investigation and disclosure of such shortcomings to this Court.

11. Although Respondent admits that there is a pending lawsuit in Georgetown County by the Board of Financial Institutions, that court has not determined that CDM Corporation or Stephen Mantell may not serve as Trustee in any matter. The Georgetown case presents a novel issue of law in South Carolina. In fact, the court there specifically denied the Board of Financial Institution's Motion for Summary Judgment on the issue of capacity to serve. Additionally and importantly, there is no allegation within the Georgetown case by the Board of Financial Institutions that an individual, here Mantell, may not serve as a trustee.

12. In response to counsel for Petitioner's personal reference to a previous matter in Probate Court regarding Stephen Mantell, her subjective statement is both unsubstantiated and irrelevant unless there was a dispositive ruling by the court, and there was none. No case law is cited or even suggested by reference. Further, and in affirmative response, Respondent states that the case referenced by Petitioner resulted in a voluntary resignation by Mr. Mantell by way of a settlement agreement to save litigation expenses to the trust. There was no finding of misfeasance, malfeasance, or nonfeasance on the part of Mr. Mantell.

Wherefore, having fully responded to the Petition, Respondent requests that the Petition be denied, Mr. Grundling's resignation be accepted without conditions, and that

the court confirm the installation of Stephen Mantell or CDM Corporation as the Second Successor Trustee directed by the Trust Agreement.

Respectfully submitted this 5th day of January 2022.

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Stephen Mantell and CDM Corporation

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STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO. 2011-GC-22-00012
(Conservator)

IN THE MATTER OF:)
[redacted])
)
)
)
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)

ORDER APPOINTING CONSERVATOR

PROBATE COURT
2011AUG29PM4:58
GEORGETOWN SC

Date of Hearing: Friday, August 19, 2011; 10:00 a.m.
Location of Hearing: Georgetown County Judicial Center, 401 Cleland Street, Georgetown, South Carolina, Courtroom 2-C
Trial Judge: Waldo A. Maring
Attorney for Petitioner: Jason P. Boan, Esquire
Attorney for Respondent/Guardian ad Litem: Roger Giardino, Esquire
Court Reporter: Alice Nelson

A hearing in the above-captioned matter was scheduled before me on Friday, August 19, 2011, at 10:00 a.m. At the call of the case, the Petitioner, [redacted] was present along with her attorney, Jason P. Boan. The Respondent, [redacted] was present with her attorney/Guardian ad Litem, Roger Giardino. Among those present in the Courtroom were the [redacted]

The issues before the Court are set forth in a Petition for Appointment of Conservator filed on April 18, 2011. This matter was served upon all interested parties on April 20, 2011, and served upon the Respondent's Guardian ad Litem and attorney on April 21, 2011. Thereafter, this Court issued a Temporary Protective Order signed by the Honorable Waldo A. Maring on May 12, 2011, and filed with this Court on that same day.

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The Respondent filed an Answer and Counterclaim to the Petition on May 23, 2011, wherein she requested that the relief sought in the Petition be denied or, in the alternative, for [redacted] to be appointed as her Conservator.

Prior to receiving any testimony in this matter, the Court addressed two issues raised by Respondent's counsel. The first included the Respondent's withdrawal of the request for [redacted] to be made Conservator and second, the Respondent's attorney addressed the inherent difficulties in serving as both the Guardian ad Litem and attorney for an alleged incapacitated individual.

After careful consideration of the pleadings in this matter, the testimony of the Petitioner, the testimony of [redacted] the testimony of the Respondent and the exhibits before this Court, including the written report of Dr. Kathleen A. O'Leary and that of Betsy Franklin, I make the following Findings of Fact:

FINDINGS OF FACT:

1. The Petitioner and Respondent in this matter are citizens and residents of Georgetown County, South Carolina.

2. I find that this Court has jurisdiction over the parties and subject matter in this action.

3. I find that the Petitioner has set forth in her pleadings that her priority for appointment as Conservator is based upon being the [redacted]

4. I find that the Petitioner has alleged that [redacted]

5. The Petitioner alleges that the Respondent [redacted]

6. The Petitioner showed to the Court through the Respondent's bank statements that, prior [redacted]

[redacted]

7. The Petitioner set forth that [redacted]

8. Petitioner further showed, through the introduction of the Respondent's bank accounts, [redacted]

9. Petitioner introduced into evidence [redacted]

10. The Petitioner also introduced into evidence [redacted]

11. The Respondent testified to the Court [redacted]

12. I find that the Respondent is an incapacitated person [redacted] and, further, I believe that it is in her best interest for a Conservator to be appointed.

13. I find that Stephen Mantell of Senior Helpers in Georgetown County shall be appointed Conservator for the above named Respondent.

14. I find that the Petitioner, [redacted]

15. I find that since the Petition has been granted, it would be appropriate to have the fees and costs associated with this matter be born by the Respondent.

Based upon the above-cited Findings of Fact, I make the following Conclusions of Law:

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CONCLUSIONS OF LAW:

1. The parties and subject matter are properly before this Court.

2. The Petitioner has carried her burden of proof in establishing that the Respondent is an incapacitated individual in need of a Conservator.

3. Although the Petitioner is qualified to be the Conservator [redacted]

4. It would be in the Respondent's best interests to have a Conservator and, based thereon, I nominate and appoint Stephen Mantell of Senior Helpers as Conservator for the Respondent. I find that Stephen Mantell has been previously qualified and used by this Court and that he has already established a sufficient Bond to satisfy to this Court that he is acceptable.

5. Stephen Mantell shall have all the authority of a Conservator, including inventory, management and disbursement of the Respondent's assets as a fiduciary for the Respondent.

6. The Respondent shall make no more expenditures of her funds, nor shall she allow anyone other than the Conservator to expend her funds, without permission of her Conservator.

7. This action brought by the Petitioner has brought beneficial results for the Respondent and I believe it is appropriate for the Respondent to pay the attorneys' fees and costs associated with this matter as follows: (1) Betsy Franklin, the court-appointed visitor, $225.00; (2) Kathleen A. O'Leary, court-appointed examiner, $400.00; (3) Roger P. Giardino, Guardian ad Litem/attorney, $4,562.50; (4) Jason P. Boan, Boan Law Firm, $5,400.00 in fees and $300.00 in costs. The Respondent has previously paid $2,700.00 to The Boan Law Firm leaving a total balance owed to The Boan Law Firm of $3,000.00; and (5) Prestige Court Reporting, Inc., $145.00.

Based upon the above-cited Findings of Fact and Conclusions of Law it is, therefore

ORDERED that a Conservator shall be appointed for the incapacitated Respondent;

ORDERED that Stephen Mantell of Senior Helpers is hereby nominated and appointed;

ORDERED that Stephen Mantell shall inventory, manage and disburse the Respondent's funds in a fiduciary capacity exclusively for the benefit of the Respondent;

ORDERED that the Respondent shall cease expending any monies or withdrawing monies from any account or allowing others to do so on her behalf without permission of her Conservator;

ORDERED that the fees and costs identified herein shall be paid by the Conservator for the Respondent; and

IT IS SO ORDERED.

HONORABLE WALDO MARING
PRESIDING JUDGE

August 29, 2011

Georgetown, SC

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South Carolina Secretary of State

Business Entities Online

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Registered Agent Search

Enter the full or partial name you wish to search for. The first 50 results will be displayed below. If you query has more than 50 results please contact the Secretary of State's office.

Search by Agent Name

mantell

Search Results

Total found: 7

Agent Name	Entity Name	Date of Incorporation	Entity Type
[redacted]			
STEPHEN P. MANTELL	CDM CORPORATION	01/08/2009	Corporation
STEPHEN P. MANTELL	GUARDIAN FIDUCIARY SERVICES LLC	03/11/2011	Limited Liability Company
[redacted]			
STEPHEN P MANTELL	MANTELL, INC.	08/06/2003	Corporation
STEPHEN P MANTELL	MANTELL PROPERTIES, LLC	08/06/2003	Limited Liability Company
Stephen Mantell	WWWB Trustees LLC	12/10/2021	Limited Liability Company

For filing questions please contact us at **803-734-2158**

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2020-CP-22-0882 **DEFENDANTS' THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendants CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("Guardian") (together, "Defendants"), hereby supplement answers to certain Interrogatories propounded by the Plaintiff South Carolina Board of Financial Institutions ("Plaintiff") pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, as follows:

4. Describe the relationship between CDM Corporation and Guardian Fiduciary Services, LLC, including but not limited to the particular services each purports to provide, whether the assets of each entity are held separately or jointly, any designations for tax purposes, and the ownership status of each entity.

ANSWER:

Pursuant to an agreement dated November 24, 2021, Defendants CDM Corporation and Guardian Fiduciary Services, LLC entered into a joint venture with WWWB Trustees, LLC.

Pursuant to an agreement dated November 24, 2021, Stephen and Candida Mantell, sole stockholders of CDM Corporation, sold 100% of the total Stock in CDM Corporation to WWWB Trustees, LLC.

Pursuant to an agreement dated November 24, 2021, Stephen and Candida Mantell, sole members and beneficial owners of Guardian Fiduciary Services, LLC, sold 100% of the total membership interest in Guardian Fiduciary Services, LLC to WWWB Trustees, LLC. Michael Markey is the sole member of WWWB Trustees, LLC. WWWB Trustees, LLC has not served as a trustee in the State of South Carolina.

5. Identify and describe the roll of each principal, employee, and independent contractor of CDM Corporation and Guardian Fiduciary Services, LLC.

ANSWER: Pursuant to the above mentioned agreements, WWWB Trustees, LLC is the sole stockholder of CDM Corporation and sole member of Guardian Fiduciary Services, LLC.

WOMBLE BOND DICKINSON (US) LLP

s/James Myrick

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Office of the Comptroller of the Currency

Washington, DC 20219

Interpretive Letter #1176
January 2021

OCC Chief Counsel's Interpretation on National Trust Banks

January 11, 2021

This letter addresses the authority of the Office of the Comptroller of the Currency (OCC) to charter national banks within the scope of 12 U.S.C. § 27(a). As discussed in detail below, 12 U.S.C. § 27(a) recognizes the authority of the OCC to charter a bank that limits its operations to *those of a trust company and activities related thereto*. Activities of a trust company include activities permissible for a state trust bank or company[1] even if those state authorized activities are not necessarily considered fiduciary in nature under 12 U.S.C. § 92a and 12 C.F.R. Part 9. This letter also discusses the standards the OCC considers when assessing whether an activity is conducted in a fiduciary capacity, and the implications for chartering de novo institutions and approving the conversion of state institutions, along with the permissibility of certain activities for existing national banks that do not have fiduciary powers.

I. General Discussion: Chartering, Fiduciary Capacity, and the Business of Banking

As noted below, the ability of national banks to engage in activities in a fiduciary capacity is governed by 12 U.S.C § 92a and 12 C.F.R. Part 9. Under these provisions, fiduciary capacity includes the enumerated activities or roles listed in the statute and regulations as well as any other capacity that the OCC authorizes pursuant to 12 U.S.C. § 92a, including those fiduciary capacities specifically recognized under state law. The provisions regarding trust banks in 12 U.S.C. § 27(a) and the fiduciary capacity authority in 12 U.S.C. § 92a are related in the sense that a national bank that limits its activities to those of a trust company typically performs at least some of its activities in a fiduciary capacity, which may include a fiduciary capacity permitted under 12 U.S.C. § 92a. Accordingly, as discussed in detail below, a national bank chartered under 12 U.S.C. § 27(a) is not limited to fiduciary activities as defined for purposes of 12 C.F.R. Part 9 and may engage in any permissible activities of a trust company.

[1] In this letter, the terms "state trust bank" and "state trust company" are used interchangeably.

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A. Chartering Authority

The OCC's authority to charter national banks is found in the National Bank Act, 12 U.S.C. §§ 21-27. The last sentence of 12 U.S.C. § 27(a) specifically addresses the chartering of trust banks by providing that:

> A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, 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*.

Congress added this provision to clarify and confirm that the OCC, under its general chartering authority, has the power to charter a national bank that limits its activities to those of a trust company and activities related to the same.[2] The statute does not define what constitutes a "trust company" under 12 U.S.C. § 27(a) and there is no "trust company" specifically authorized under federal law outside of 12 U.S.C. § 27(a). At the time of the enactment of 12 U.S.C. § 27(a), however, many banks had trust departments to provide customers with dedicated trust and other related services. Likewise, state law permitted the operation of state trust companies and trust banks to provide similar dedicated trust and related services.[3] In the absence of other textual and statutory guidance, the phrase "trust company" contained in 12 U.S.C. § 27(a) has been construed to refer to and include the activities of trust departments of banks as well as the activities of trust companies and trust banks authorized under the laws of the various states.

The activities of a trust company, trust bank, or trust department of a bank typically include performing fiduciary activities as defined by federal or state law, as well as other activities that are non-fiduciary in nature, such as non-fiduciary custody. Therefore, under 12 U.S.C. § 27(a), a national bank is not illegally constituted because it limits its operations to such activities.

B. Fiduciary Capacity Authority

Twelve U.S.C. 92a provides the authority for the OCC to permit national banks to engage in activities in which the bank will be acting in a fiduciary capacity. Specifically, 12 U.S.C. § 92a(a) provides:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in

[2] *See Nat'l State Bank of Elizabeth, N. J. v. Smith*, 591 F.2d 223, 231 (3d Cir. 1979) (noting that the last sentence in 12 U.S.C. § 27(a) "validates retroactively as well as prospectively the action of the Comptroller in limiting to the business of a trust company the operation of a national banking association to which he has granted a certificate of authority to commence business").

[3] *Id.*

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> which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

The OCC has implemented 12 U.S.C. § 92a in 12 C.F.R. Part 9. Twelve C.F.R. Part 9 applies to national banks that act in a "fiduciary capacity." Twelve C.F.R. § 9.2(e) defines "fiduciary capacity" to include the activities listed in 12 U.S.C. § 92a(a) along with the following additional activities:

- transfer agent (which is akin to a registrar of stock and bonds);
- custodian under a uniform gifts to minors act (which is a type of guardian of estate);
- investment adviser, if the bank receives a fee for its investment advice;
- any capacity in which the bank possesses investment discretion on behalf of another; and
- any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. § 92a.

1. Enumerated Fiduciary Capacities

As noted above, 12 U.S.C. § 92a and 12 C.F.R. Part 9 enumerate specific roles or functions of banks that are regarded as being performed in a fiduciary capacity. A bank that engages in any of the enumerated roles or functions is doing so in a fiduciary capacity and is subject to the requirements of 12 C.F.R. Part 9.

There is no *de minimis* rule regarding national banks' use of trust powers. A national bank that only performs one fiduciary capacity under 12 U.S.C § 92a would need trust powers. Conversely, there is also no requirement that a national trust bank chartered under 12 U.S.C. § 27(a) perform primarily in a fiduciary capacity.

2. Fiduciary Capacity Under State Law

As noted above, under 12 U.S.C. § 92a, fiduciary capacity may also include "any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located." This is the so-called "bootstrap" provision of 12 U.S.C. § 92a.

For the OCC to use the bootstrap provision and determine that a state fiduciary capacity—i.e., an activity, role, or function that a state's law regards as being performed in a fiduciary capacity—is a fiduciary capacity for purposes of 12 U.S.C § 92a, the OCC must determine that a national bank is engaging in the relevant activity, role, or function consistent with the parameters provided for in the relevant state law to the same extent as a state bank to qualify as a fiduciary capacity. Thus, under the bootstrap provision, a bank performing in a fiduciary capacity for purposes of state law and operating consistent with the parameters provided for in relevant state laws and regulations may be deemed to be performing in a

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fiduciary capacity for purposes of 12 U.S.C. § 92a and subject to 12 C.F.R. Part 9.[4] Conversely, a bank is not engaging in a fiduciary capacity for purposes of the bootstrap provision of 12 U.S.C. § 92a or 12 C.F.R. Part 9 when the bank is engaging in an activity, role, or function inconsistent with the parameters provided for in the relevant state law for a fiduciary capacity.[5]

This is consistent both with the plain language of 12 U.S.C. § 92a, as well as the principles upon which the National Bank Act is based, which frequently turns on permissibility under the law of the state in which the national bank is located.[6]

3. Any Other Similar Capacity the OCC authorizes pursuant to 12 U.S.C. § 92a.

As noted above, 12 C.F.R. § 9.2(e) defines "fiduciary capacity" to include "any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. § 92a."[7]

In determining whether an activity is performed in "any other similar capacity," the OCC considers the substantive conduct of the bank in performing the activity, and whether it is analogous to the enumerated capacities in 12 U.S.C. § 92a and 12 C.F.R. Part 9.[8] Specifically, the OCC looks to the exemplar fiduciary roles of trustee and investment advisor and considers (1) whether the activity involves the exercise of discretion on behalf of a client

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[4] If the OCC recognizes a capacity that is a fiduciary capacity under applicable state law as a "fiduciary capacity" under 12 U.S.C. § 92a, then the recognized capacity will be a fiduciary capacity subject to the implementing regulations of 12 C.F.R. Part 9. The particular provisions of 12 C.F.R. Part 9 that are relevant to the activity will depend on the nature of the activity.

[5] This reasoning can be contrasted with OCC Interpretive Letter No. 265, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCP) ¶ 85,429 (July 14, 1983), which concluded that the OCC will only look to state law to determine whether a fiduciary capacity of national bank is permissible after the activity is determined to be "fiduciary" within the meaning of 12 U.S.C. § 92a. To the extent that Interpretive Letter No. 265 conflicts with this decision, it is superseded.

[6] There are numerous examples of this. Under 12 U.S.C. § 85, a national bank generally may charge the interest rate permitted by the state in which it is located, and under 12 U.S.C. § 36, a national bank may establish new branches to the extent that a state bank could establish a new branch under the law of that state. As a result, national banks based in different states may be subject to different interest rate caps or branching laws. The fact that a capacity may be considered fiduciary under one state's laws is not a grant of authority for banks located in a different state that does not define such a capacity as fiduciary to act in a fiduciary capacity.

[7] The language "any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a" in 12 C.F.R. § 9.2(e) is a catch-all term that covers the broad grant of statutory authority given to the OCC to recognize other fiduciary capacities not specifically enumerated (e.g., only generally referred to) in the statute. *See* Fiduciary Activities of National Banks; Rules of Practice and Procedure, 60 Fed. Reg. 66163, 66164 (Dec. 21, 1995) (describing the language "any other similar capacity" as "a catch-all category").

[8] *See* "Asset Management" booklet of the *Comptroller's Handbook* 8-9 (Dec. 2000) (defining "fiduciary capacity" and noting that national banks acting in a fiduciary capacity are subject to specific standards of care and prudence); *see also* Black's Law Dictionary 235 (9th ed. 2009) (defining "capacity" as "[t]he role in which one performs an act").

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or third party in a manner that would have an economic impact on the client or third party, and (2) whether, in carrying out the discretionary activities, the bank is subject to the duties or standards of behavior that are customarily associated with being a fiduciary. These fiduciary standards and duties are high standards of conduct that generally require the fiduciary to act with utmost care and in the best interest of the client.[9] A fiduciary satisfies these obligations by, for example, acting with utmost loyalty with respect to the client and the client's assets and making sure that decisions are prudently undertaken after consideration of pros and cons of the particular action.

Under 12 C.F.R. Part 9, national banks acting in a fiduciary capacity are subject to specific standards, including adopting and following appropriate policies and procedures, conducting appropriate reviews, maintaining appropriate records, and arranging for suitable audits.

C. Business of Banking

Under 12 U.S.C. § 24(Seventh), national banks may engage in the business of banking and activities incidental to the business of banking.[10] When determining whether an activity is part of the business of banking, the OCC considers the following factors under 12 C.F.R. § 7.5001(c)(1):

- Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;
- Whether the activity strengthens the bank by benefiting its customers or its business;
- Whether the activity involves risks similar in nature to those already assumed by banks; and

[9] Among the common duties of a fiduciary are: duty of loyalty (acting in good faith, protecting the interest of the client, and taking no action in favor of the fiduciary that would impair the interest of the client); duty of care or prudence (exercising reasonable care, skill, and caution in performing activities); duty to segregate funds (keeping client assets distinct from other assets, including those of the fiduciary); duty to safeguard (protecting client assets from damage, loss, or destruction); duty to invest (acting as a prudent investor bearing the purpose and interest of the client mind); and duty of accounting (providing full and fair disclosure and keeping records of receipts, expenses, sales, purchases, exchanges and/or distributions to account for the fiduciary's activities on behalf of the client). *See* Restatement (Third) of Trusts §§ 76-83 (2007). *See also Bogert's The Law of Trusts and Trustees* § 543. *See also* the U.S. Securities and Exchange Commission regulation regarding the fiduciary duties of investment advisors, requiring, inter alia, the fiduciary to at "all times, serve the best interest of its client and not subordinate its client's interest to its own," and to "eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested." 17 C.F.R. Part 276, IA-5248, "Comm'n Interpretation Regarding Standard of Conduct for Inv. Advisers" (June 5, 2019) pp. 8, 23.

[10] Twelve C.F.R. § 7.5001(d) provides the OCC may find an activity is permissible because it is incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. *See also* OCC Interpretive Letter No. 940 (May 24, 2002).

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- Whether the activity is authorized for state-chartered banks.[11]

Given this fourth factor, "Whether the activity is authorized for state-chartered banks," an activity permitted for state trust banks may be part of the business of banking under the authority of 12 U.S.C. § 24(Seventh) for national banks if the activity is authorized for state-chartered banks, and the OCC is satisfied that the remaining three factors are also sufficiently met.

II. De Novo Chartering of National Banks that Limit Their Activities to Those of a Trust Company and Activities Related Thereto

As noted above, under 12 U.S.C. §§ 21-27, the OCC may charter a national bank that limits its activities to those of a trust company and activities related thereto. A national trust bank may be permitted to engage in any and all activities permitted under state law for a state trust company located in the same state under the plain terms of 12 U.S.C. § 27(a).

Moreover, a national trust bank may also engage in activities beyond those authorized under state law for a state trust company provided such activities are permitted for a national bank under other sources of authority such as 12 U.S.C. §§ 24(Seventh) or 92a, as discussed above.[12]

In addition to being legally permissible, the activities of a national trust bank must be conducted in a safe and sound manner and in compliance with applicable law and regulations, including those relating to the Bank Secrecy Act, anti-money laundering, Office of Foreign Assets Control requirements, and consumer protection.

III. Charter Conversions

As discussed above, the chartering provisions in 12 U.S.C. §§ 21-27 provide the authority for all national bank charters. In the case of conversions, 12 U.S.C. § 35 provides additional provisions regarding conversions of state banks into national banks with respect to legacy activities. Typically, the legacy activities of a converting state trust bank will be permissible for a national trust bank under 12 U.S.C. § 24(Seventh), which includes activities permitted within the business of banking, 12 U.S.C. § 27(a), which includes all legacy activities that are allowed to the converting state trust company under state law, or 12 U.S.C. § 92a, which includes activities the OCC determines are conducted in a fiduciary capacity.

In the event a legacy activity of a converting state trust bank is not permissible under the foregoing statutes, however, 12 U.S.C. § 35 also recognizes that in some cases a

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[11] When considering the four business of banking factors described in section 7.5001(c)(1), the OCC has the discretion to vary the weight given to each factor. *See* 12 C.F.R. § 7.5001(c)(2) ("The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.").

[12] An activity may be permissible for a national trust bank under multiple sources of authority, and a bank need not rely on all sources of authority to engage in any one activity.

converting bank may have assets that are not permissible for national banks generally under applicable federal law and provides that in connection with such a conversion:

> The Comptroller of the Currency may, in his discretion and subject to such conditions as he may prescribe, permit such converting bank to retain and carry at a value determined by the Comptroller such of the assets of such converting bank as do not conform to the legal requirements relative to assets acquired and held by national banking associations.

The text of the statute itself does not place any temporal limits on the retention of nonconforming assets, and the OCC may exercise discretion in permitting the retention of certain nonconforming assets.[13] The OCC has typically required divestiture or conformity of non-conforming assets within a reasonable time period, typically two years.[14]

IV. New Activities in an Existing Bank Without Fiduciary Powers

National banks without fiduciary powers may also engage in certain activities of state trust banks that are not considered fiduciary in nature under 12 U.S.C. § 92a. If the state trust bank powers are permissible for national banks under 12 U.S.C. § 24(Seventh), based on the test outlined above, and are not fiduciary for purposes of 12 U.S.C. § 92a and 12 C.F.R. Part 9, any national bank can engage in those state trust bank activities without fiduciary powers and without being subject to 12 C.F.R. Part 9.

National banks seeking guidance on whether a new activity would be subject to 12 C.F.R. Part 9 should speak with examination staff who may seek further guidance from Asset Management Policy and the Law Department.[15]

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[13] *See* Corporate Decision No. 95-55 (Nov. 15, 1995). The OCC relied on 12 U.S.C. § 35 to allow a state bank converting to a national bank to permanently retain its ownership interest in two nonconforming insurance subsidiaries. The legal basis for the decision was fully explained in OCC Interpretive Letter 757 (Apr. 1, 1996). When the OCC's decision regarding the insurance subsidiaries was challenged in *American Council of Life Insurance v. Ludwig*, 1 F. Supp. 2d 24, 29 (D.D.C. 1998) *vacated and remanded*, 194 F.3d 173 (D.C. Cir. 1999), the U.S. District Court for the District of Columbia held that the OCC correctly interpreted 12 U.S.C. § 35 when it allowed the converting bank to permanently retain the nonconforming insurance subsidiaries. While that portion of the District Court's decision was ultimately vacated and remanded on appeal by the D.C. Circuit, it was only done so on mootness grounds because the OCC ordered the divestiture of the two insurance subsidiaries when it approved a subsequent merger of the bank with and into another national bank. *See* OCC Conditional Approval No. 288 (Sept. 30, 1998).

[14] *See* "Conversions to Federal Charter" booklet of the *Comptroller's Licensing Manual* 14 (Oct. 2019) ("The OCC may give a converting depository institution a reasonable period of time, generally not to exceed two years after conversion, to divest or conform any nonconforming assets or activities, including nonconforming subsidiaries, not being permanently retained. A reasonable period is given so that the converting depository institution may take the necessary action without undue hardship.").

[15] Similarly, current national charters with fiduciary powers should continue to apply 12 C.F.R. Part 9 to their current activities as they have done in the past.

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/s/

Jonathan V. Gould
Senior Deputy Comptroller & Chief Counsel

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS CASE NO. 2020-CP-22-0882
South Carolina Board of Financial Institutions, Plaintiff, vs. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendants.	)	**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION**

The Defendants, CDM Corporation, Inc. and Guardian Fiduciary Services, LLC ("Defendants"), hereby file this Memorandum of Law in Opposition to the Motion for Partial Reconsideration filed by the Plaintiff, South Carolina Board of Financial Institutions ("BOFI"). This Court issued an Order granting the parties Motion for Summary Judgment on November 3, 2022. BOFI filed a Motion for Partial Reconsideration on November 14, 2022. For the following reasons, the Court should deny BOFI's Motion

For a recitation of the facts, please see Defendants' Motion for Summary Judgment filed August 22, 2022, and the Order dated November 3, 2022.

LEGAL STANDARD

While South Carolina Rule of Civil Procedure 59(e) allows a party to move for an order altering or amending a judgment, "[a] party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc. v. Haden*, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing *C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

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I. BOFI's Motion makes a materially erroneous representation regarding undersigned counsel's actions.

The "Background" section of BOFI's Motion for Partial Reconsideration is accurate, except for one glaring mistake. The motion unfortunately accuses counsel for the Defendant companies of falsely representing to this Court that Defendants had withdrawn or were in the process of withdrawing from all trusteeships, citing only to the concluding paragraph of Defendants' Answer in the Stahlberger Trust matter dated December 11, 2020.

Here are the facts which refute BOFI's accusation:

1) The "wherefore" clause from the conclusion of the Stahlberger Answer, while inartfully drawn, was cited in isolation and does not include other language from the very same Answer that clearly shows Stephen Mantell was in fact already acting individually as Trustee: "Further, and because the terms of the Stahlberger Trust control, Stephen Mantell now serves as Trustee and Gundling's Petition herein is simply a masked attempt to remove Mantell as Trustee, subject to all the legal requirements of such action." Stahlberger Answer at Paragraph 8, attached as Exhibit B to BOFI's motion. Further, every statement challenged by BOFI contained in Paragraph 11 is a true statement.
2) The Stahlberger Trust by its terms required a probate bond in the name of the Trustee. The $3,500,000.00 bond, acquired one month prior to the Answer, was secured only in the name of "Stephen Mantell" and not in the name of CDM Corporation or Guardian Fiduciary Services. The bond, attached to the Answer in the Stahlberger case, was ignored in BOFI's accusation to this Court. And while the Answer in the Stahlberger case was filed as Exhibit B to BOFI's current motion, the bond naming Stephen Mantell

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accompanying the original filing as Exhibit A, was not. See the Bond attached hereto as **Exhibit 1.**

3) It is accurate that the probate court in Stahlberger had a decision to make regarding the Settlor's intent. The exact language of the Trust, signed by Stahlberger himself and to be respected and evaluated by the court, appointed "CDM, by and through its representative Stephen P. Mantell (provided that Stephen P. Mantell individually is actively, personally serving as administrator of the Trust) shall serve as Trustee." It was the job of Defendants' counsel to persuade opposing counsel and the court that the intent of the Settlor was to put Stephen Mantell individually in the role of Trustee, as indicated by choice of the words "provided", "individually", "actively," and "personally serving".

4) The argument succeeded. The probate court, in its discretion and by agreement of counsel, installed Stephen Mantell individually as Trustee , just as counsel for Defendants had urged. The Order proving this, and dated May 23, 2022, is attached as **Exhibit 2** and states at Paragraph 2: "Stephen P. Mantell, in his in individual capacity shall serve as the Second Successor Trustee of the Trust." (Emphasis added).

Any allegation that counsel for Defendant companies was not doing everything possible to move all trusteeships into the individual name of Stephen Mantell (as permitted under any interpretation of the statute) or to end them is utterly wrong.

II. BOFI's motion avoids the key issue before the court: Whether the Defendants' activities constituted "a trust business."

- Section I of BOFI's Motion raises new issues and is therefore improper for a motion to reconsider.
- BOFI's Motion for Partial Reconsideration focuses on BOFI's own interpretation of the probate court's authority. However, this lawsuit was not filed to determine the probate

court's adjudicative and regulatory authority, but rather to determine whether the Defendants' activities constituted "a trust business" under BOFI's jurisdiction.

- The Probate Code explicitly details the probate court's authority to appoint any "person" to non-trustee fiduciary roles including conservatorships, guardianships, and serving as attorney-in-fact, personal representatives or executors. Section 62-5-101 of the South Carolina Probate Code defines "person" as an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity." S.C. Code Ann. § 62-5-101.
- At no point does the Probate Code cede authority for administration or regulation of probate matters to BOFI. Instead, S.C. Code Section 34-21-10 merely states "[n]o corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board." This section does not impact the probate court's ability to appoint any "person," but rather imposes an additional hurdle for a "a trust business" to overcome.

III. Section II of BOFI's motion again attempts to confuse the issues. It further inaccurately construes this Court's Order.

- As referenced in Section II above, the Probate Code explicitly outlines the probate court's authority to appoint any "person" to fiduciary roles. The probate court's authority to appoint any "person" is separate and distinct from BOFI's role in regulating "a trust business" as outlined in Section 34-21-10.
- Despite BOFI's contention to the contrary, this Court's Order is clear about which fiduciary role is prohibited without prior BOFI approval. The Order states "serving as, and holding themselves out *to serve as a trustee* without prior approval from BOFI"

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violates Section 34-21-10. (Emphasis added). It further states that "as a matter of law, the term 'trust business,' as contemplated by Section 34-21-10 must involve a trust."

IV. The court correctly held that the usual and customary meaning of "a trust business" is a business involved in the administration of trusts.

- BOFI's Motion argues that the definition of "a trust business" applied by the Court "erroneously renders numerous provisions of the South Carolina Code meaningless." In so arguing, BOFI cites to only one section of the South Carolina code– S.C. Code Section 34-21-210. However, as detailed in Defendants' Motion and Memorandum in Support for Summary Judgment, the South Carolina Attorney General already concluded "courts have defined 'trust business' or a 'trust company' according to the common and ordinary definition of those terms," and this view is "consistent with those set forth in in Title 34 of the Code. See, e.g. Sections 34-21-20 through -70; Section 34-21-210 (1) [definition of 'trust institution']; Section 34-21-220 et seq ['common trust funds']." South Carolina Attorney General Letter to the Commissioner of Banking, Louie Jacobs, 1996 WL 93998, at 2.[1] The usual and customary meaning of a trust business, as interpreted by this Court and the South Carolina Attorney General, is consistent with other sections of the South Carolina Code, including Section 34-21-210. BOFI's definition is overreaching and unnecessary.

V. Section IV of BOFI's Motion contains a mere reiteration of its prior arguments.

- BOFI's citation to the June 1, 2022 "Policy Statement Concerning the Conducting of Trust Businesses by Non-Depository Entities in South Carolina" is not persuasive as the policy was a last-ditch effort to write away this lawsuit through unilateral action

[1] For a full recitation of the 1996 Opinion from the Office of Attorney General, please see Defendants' Motion and Memorandum in Support for Summary Judgment.

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by BOFI. Authorized well after this lawsuit began, it should be given no weight to determine this pre-existing issue.

- While BOFI specifically addresses and argues the applicability of Interpretive Letter #1176 from the Office of the Comptroller of the Currency for the first time in its Motion for Partial Reconsideration, the heart of the argument is a repeated attempt to apply 12 U.S.C. § 92a to the case at bar. However, as already addressed in Defendants' Motion and Memorandum in Support of Summary Judgment, citation to § 92a is inapplicable and irrelevant to the issues in this case. Even if § 92a and the OCC's interpretation thereof were applicable, the OCC's guidance relates only to National Trust Bank activities under federal, not South Carolina, law.
- BOFI's citation to other states' laws is an irrelevant, hyperbolic mischaracterization. This self-serving "survey" was created by BOFI's counsel and is merely argument or attorney work product- not evidence. This "survey" fails to show a complete and realistic representation of the states' laws and more importantly is irrelevant to this Court's interpretation of *South Carolina* law.

VI. At no point in the Court's Order are the affidavits of Dundee Carter or Julian Walker referenced; BOFI's request that this testimony not be considered is moot.

- BOFI correctly states that "neither individual's testimony is cited in the Court's Order." Accordingly, this point is moot.

CONCLUSION

For the foregoing reasons BOFI's Motion for Reconsideration should be denied.

Respectfully Submitted,

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Counsel for Defendants CDM Corporation, Inc. and Guardian Fiduciary Services, LLC

Dated: November 23, 2022
Charleston, South Carolina

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Liberty Mutual SURETY

BOND NUMBER: 285053410

IN THE PROBATE COURT OF THE STATE OF SOUTH CAROLINA
IN AND FOR THE COUNTY OF GEORGETOWN

IN THE MATTER OF

STAHLBERGER REVOCABLE TRUST

ROBERT K. STAHLBERGER, SETTLOR

ESTATE NO. 2018-ES2200388

BOND OF TRUSTEE
(NON-COURT SUPERVISED)

Case No. _____

All papers and notices may be served at:
Liberty Mutual Surety
Commercial Surety
Claims 1001 4th
Avenue, Suite 1700
Seattle, WA 98

KNOW ALL MEN BY THESE PRESENTS:

That we, Stephen P. Mantell as Principal(s)and the The Ohio Casualty Insurance Company, as Surety, are held and firmly bound unto Estate of Robert K. Stahlberger as Obligee(s)in the sum of Three Million, Five Hundred Thousand and No/100 Dollars ($3,500,000.00) for which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has been appointed Trustee of the Stahlberger Revocable Trust dated March 10, 2016.

NOW THEREFORE, the condition of this obligation is such that, the Principal and the Surety, agree to satisfy any final and non-appealable surcharge judgment the Obligee may obtain in a court of law against the Principal for breach of fiduciary duty, while acting as Trustee of the above-named Trust. The aggregate liability of the Surety, for all claims asserted against this bond, shall be limited to the face amount hereof regardless of the number of claims involved.

This bond may be terminated by the Surety giving thirty (30) days written notice to the Obligee, such notice to be sent by certified mail, such termination shall not affect the liability incurred under this obligation prior to the effective date of such termination. No suit may be maintained against the Surety pursuant to this bond unless filed within one year after the effective date of termination or cancellation hereof.

It being understood that the Surety company shall not be held liable for any acts or omission or commission by any Fiduciary, former or present, of the estate prior to the effective date of this bond.

NOW, THEREFORE, if the said Principal shall faithfully execute the duties of the trust according to law, then this obligation shall be void, otherwise to remain in full force and effect.

Signed at _____ on Dec 8, 2022

By _____
Stephen P. Mantell Principal

THE OHIO CASUALTY INSURANCE COMPANY

By _____
Todd A. Stein Attorney-in-Fact

EXHIBIT A

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PROBATE COURT
2022MAY23PM1:11
GEORGETOWN SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE PROBATE COURT
COUNTY OF GEORGETOWN	)	Case No. 2021-GC-22-00037

In re: ROBERT K. STAHLBERGER REVOCABLE TRUST	)	ORDER GRANTING RESIGNATION OF TRUSTEE AND APPOINTMENT OF SUCCESSOR TRUSTEE

This matter came before the Court upon the Petitioner David Gundling's Amended Summons and Amended Petition for Approval of Resignation of Trustee and Appointment of Successor Trustee filed February 9, 2022. Stephen P. Mantell, the named Successor Trustee of the Robert K. Stahlberger Revocable Trust UAD 3/10/2016 (the "Trust") and all the Charities set forth below were properly served with the Amended Petition and the Proofs of Service were filed with this Court. Stephen P. Mantell, through his counsel, and Father Pat's Kitchen, through its counsel, filed answers to the Amended Petition. No other Charities appeared in this action. Cliff Tall was appointed by this Court to serve as Guardian ad Litem for the Charities. Stephen P. Mantell, the Guardian ad Litem and all the Charities were properly served with the Notice of Hearing and the Proof of Delivery was filed with this Court on April 14, 2022. A hearing was held on the Petition on May 11, 2022. At the hearing Petitioner appeared Pro Se, Respondent, Stephen P. Mantell was represented by James F. McCrackin, Respondent Father Pat's Kitchen was represented by Elizabeth Attias, and Cliff Tall appeared as Guardian ad Litem for the remaining charities. No other charities appeared at the hearing.

BACKGROUND

David Gundling has been Trustee of the Trust since the death of the settlor in 2018. The Trust is a charitable Trust providing distributions to Father Pat's Kitchen, Lowcountry Food

TRUE AND CORRECT COPY
ATTEST:
JUDGE OF PROBATE
GEORGETOWN COUNTY, SC
Court Coordinator

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Bank, Guiding Eyes for the Blind, St. Labre Indian Catholic High School, Salvation Army, Smile Train and Special Olympics of South Carolina (collectively, the "Charities"). Mr. Gundling now wishes to resign as Trustee. The terms of the Trust state the Second Successor Trustee is Stephen P. Mantell who shall serve as Trustee pursuant to the terms and conditions of the Trust and shall post a trustee bond or surety in the amount necessary to fully protect the Trust. In January, 2022, Mr. Gundling signed a document attempting to appoint Miles Adler as Trust Protector. Prior to the hearing the parties reached an agreement that was put on the record. At the hearing, Mr. Gundling informed the Court that he consented to the agreement but invited the Court to inquire into the matter at the discretion of the Court.

AGREEMENT

1. David Gundling hereby resigns as Successor Trustee of the Trust.

2. Stephen P. Mantell, in his individual capacity shall serve as the Second Successor Trustee of the Trust.

3. Stephen P. Mantell as required pursuant to the terms of the Trust obtained Bond in the amount of $3,500,000.00 on December 8, 2021 which is sufficient to fully protect the Trust.

4. Stephen P. Mantell, as Trustee shall provide an annual accounting to the Charities showing the balance of the Trust, the total charitable donations for the current year, and the administrative cost of the Trust.

5. The Trust does not provide for a Trust Protector, and the attempted appointment of a Trust Protector by Petitioner dated January 19, 2022, is void and of no effect.

All parties confirmed and consented to the Agreement on the record. Cliff Tall, as Guardian ad Litem, stated that he thoroughly investigated this matter, that he discussed the

pleadings with the parties, and that he is satisfied with the Agreement and the qualifications of Mr. Mantell.

Based on the forgoing, it is hereby ordered that the Amended Petition for Approval of Resignation of Trustee and Appointment of Successor Trustee is **GRANTED**. The Resignation of David Gundling as Trustee of the Trust is hereby accepted and Stephen Mantell in his individual capacity is the Successor Trustee. Stephen P. Mantell shall be required pursuant the terms of the Trust to maintain bond while serving as Successor Trustee. Stephen P. Mantell shall provide an annual accounting to the Charities as set forth above. The attempted appointment of a Trust Protector by Petitioner is void and of no effect. The Guardian ad Litem for the Charities, Cliff Tall is hereby relieved of his duties and shall submit his bill to this Court for approval and the Trust is authorized to pay such compensation to the Guardian ad Litem.

AND IT IS SO ORDERED.

Leigh Powers Boan, Probate Judge
Georgetown County, South Carolina

May 23, 2022

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Georgetown County Judge of Probate

LEIGH POWERS BOAN

Patricia W. McCrea, *Clerk of Court*
Lisa M. Wheeler, *Deputy Clerk*
Christy L. Emry, *Deputy Clerk*
Keena Y. Cumbee, *Deputy Clerk*

Susan L. Stewart, Court Coordinator

June 23, 2022

James F. McCrackin, Esquire
Nelson Mullins
P.O. Box 3939
Myrtle Beach, SC 29578

Re: In the Matter of Robert K. Stahlberger Revocable Trust
Case No. 2021-GC-22-00037

Dear Mr. McCrackin:

Enclosed is a certified copy of the Order Granting Resignation of Trustee and Appointment of Successor Trustee in the above referenced matter.

Please provide a copy to all interested parties and file proof with the Court. Thank you for your assistance.

Thank you for your assistance.

Sincerely,

Susan L. Stewart
Court Coordinator
sstewart@gtcounty.org

Enclosure as stated

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)	BEFORE THE MASTER IN EQUITY OF GEORGETOWN COUNTY
South Carolina Board of Financial Institutions, Plaintiff, v. CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Defendant.	)	CASE NO.: 2020-CP-22-00882 **PLAINTIFF'S REPLY TO IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION ALTERATION OR AMENDMENT**

Plaintiff Board of Financial Institutions ("BOFI") hereby submits this Reply in Response to Defendants' Memorandum in Opposition to Plaintiff's Motion for Partial Reconsideration Alteration or Amendment.

ARGUMENT

I. BOFI'S MOTION ADDRESSES THE FINDINGS OF THE COURT AND DOES NOT RAISE ANY "NEW" ISSUES.

BOFI's Motion raises arguments which are tied directly to, and made in response to the Court's Order in this matter. Defendants contend that Section 1 of BOFI's Motion "raises new issues" which are not appropriate for a motion made pursuant to Rule 59(e), SCRCP. The issues raised in BOFI's Motion are not "new," although BOFI does offer responses to legal and factual matters that the Court has ruled on.

In Section I of BOFI's Motion, BOFI contends that BOFI, not the Probate Court, licenses and regulates persons conducting "non-trustee" trust business. This argument is in direct response to the Court's Order, which states "Because these [non-trustee fiduciary] roles are codified in the Probate Code and are regulated by the probate courts, the Board of Financial Institutions does not control and regulate these functions." Pl. Motion, Ex. A (Summary Judgment Order).

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BOFI does cite evidence that was not previously discussed in its Motion for Summary Judgment, such as Defendants' acquisition by a Michigan-based entity, WWWB Trustees, LLC, which also lacks authority to serve as a fiduciary, or the fact that Mantell has sought Probate Court appointments under various business names. BOFI brings these matters to the Court's attention in response to the Court's finding that the Probate Court "regulates" non-trustee fiduciary roles, despite the Probate Court's lack of authority or ability to do so on a statewide basis.

Pursuant to Rule 59, upon motion, a court may, in its discretion, "amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." The Rules of Civil Procedure allow BOFI to request that the Court reconsider its determinations, in light of the relevant law and evidence. This is particularly appropriate given that the Court decided the parties' summary judgment motions without oral argument, and the parties did not offer responses in real-time to questions which might have been raised by the Court.

As such, the issues in BOFI's Motion are discussed in accordance with Rule 59(e), SCRCP.

II. CDM AND GUARDIAN'S CONDUCT UNLAWFUL TRUST BUSINESS BY SERVING AS TRUSTEE AND NON-TRUSTEE FIDUCIARY ROLES, ANY ONE OF WHICH CONSTITUTE TRUST BUSINESS.

Thought it is not necessary to respond to every point, BOFI must correct a few assertions made by Defendants in their opposing memorandum.

First, Defendants state that BOFI's motion avoids the question of whether Defendants' activities constituted a trust business. To be clear: Defendants have violated the law by serving as trustee, conservator, guardian, personal representative, and agent. Serving in any one of these roles constitutes trust business which requires BOFI's prior approval in accordance with S.C. Code Ann. § 34-21-10. No provision of the Probate Code or power of the Probate Court changes the fact that Defendants must have BOFI's prior approval before serving as or accepting appointment to serve as a trustee, conservator, guardian, personal representative, or agent.

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Second, Defendants indicate that the Attorney General has opined that trust business must involve a trust instrument, by offering an incomplete quote from an Attorney General's opinion. To the contrary, the Attorney General indicates that both trustee and non-trustee fiduciary roles constitute trust business:

> In Goss and Hamlyn Howe v. State, 285 P.2d 428, 431 (Okl. 1955), the Court cited Websters New International Dictionary (2d ed. unabridged) defining a "trust company" as "any corporation found for the purpose of acting as trustee."… It is also said that a "trust company" is "a corporation formed for the purpose of taking, **executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc.**"
>
> The foregoing definitions are consistent with those set forth in Title 34 of the Code. See, e.g. Sections 34-21-20 through -70; Section 34-21-210 (1) [definition of "trust institution"[1]]; Section 34-21-220 et seq ["common trust funds"].

1996 WL 93998, at *2 (S.C.A.G. Feb. 9, 1996) (emphasis added). The Attorney General's Opinion here is identical to BOFI's position. Trust business includes acting as trustee, executor, guardian, other fiduciary roles listed in S.C. Code Ann. §§ 34-21-10 and 34-21-210.

Third, BOFI's Motion argues that the definition of "a trust business" applied by the Court erroneously renders numerous provisions of the South Carolina Code ambiguous meaningless. Defendants incorrectly note that, in making this assertion, BOFI cites to only one section of the South Carolina code– S.C. Code Section 34-21-210. Frankly, rendering one section meaningless or ambiguous should be enough to give this Court justification in altering its decision; however,

[1] (1) "Trust institution" means… any trust company, authorized to act in **a fiduciary capacity** in this State, and under the supervision of the Comptroller of the Currency of the United States, or the Federal Reserve System, or the State Board of Bank Control of South Carolina;

(2) The term "fiduciary" means a trust institution undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes **trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent**.

S.C. Code Ann. § 34-21-210.

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BOFI contends that the following statutory provisions are rendered ambiguous or meaningless by application of the Court's Order:

> •34-21-10, which prohibits "trust business" without prior BOFI approval, but does not prevent an individual "from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity."
>
> •34-21-210, which defines "trust institution" as "any trust company authorized to conduct a trust business in this State, or any trust company, authorized to act in a fiduciary capacity in this State," and defines "fiduciary" to include "trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent."
>
> •34-15-10, which provides that a trust company must have at least $250,000 in capital to serve as "executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property."
>
> •34-15-20, which requires trust companies to file fiduciary bonds similar in "every respect to the bonds required by law of private persons acting as such fiduciaries," when appointed to "administrator, receiver, assignee, guardian or trustee."
>
> •34-1-200(B), which requires a bank's charter to set forth "any trust powers of the bank" and whether they are "full or partial trust powers," indicating that trust powers include more than simply serving as a trustee.
>
> •34-3-850, which provides that, when trust companies merge, all of the powers and duties "regarding each fiduciary capacity or other relationship transferred, whether created by will, indenture, trust, court order, agreement, or other means," shall transfer to the surviving entity.

Each of these statutes presumes that the "trust business" which BOFI licenses and regulates includes serving in non-trustee rules such as conservator, guardian, personal representative, agent, and other fiduciary roles. If serving in non-trustee roles does not constitute "trust business" or the work of a "trust company" or "trust institution," then why are these fiduciary roles repeatedly

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listed, by name, and regulated in connection with such business? Defendants have yet to offer an answer to this question, and more importantly, the Court's Order fails to address it. However, BOFI's contention, consistent with with its Policy Statement, articulates a clear statutory interpretation that does not create any statutory ambiguity.

Finally, colorful though it may be, Defendants' characterization of BOFI's "Policy Statement Concerning the Conducting of Trust Businesses by Non-Depository Entities in South Carolina" as "a last-ditch effort to write away this lawsuit through unilateral action," is neither accurate, nor is it a legal justification for this Court to ignore the Board's interpretation of the law.

"If a statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16 (2014). An agency's interpretation is worthy of deference and "becomes of controlling weight unless it is plainly erroneous or inconsistent with" the statute or regulation being interpreted. Id. at fn. 7.

The Policy Statement is entirely consistent with the law of South Carolina, as has been thoroughly established in this and previous filings, and it makes no assertion that is "plainly erroneous or inconsistent" with state law. The Board is made up of eleven qualified members, ten of whom were "appointed by the Governor with the advice and consent of the Senate" and one of whom, the Treasurer, is a Constitutional officer and elected official. S.C. Code Ann. § 34-1-20. The Policy Statement represents the Board's interpretation of S.C. Code Ann. § 34-21-10, as articulated through proper Board action, taken in a duly called meeting of the Board. This well-qualified Board's voice must not be ignored.

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III. CDM'S OWN COURT FILING SPEAKS FOR ITSELF: CDM PURSUED A TRUSTEE APPOINTMENT IN JANUARY 2022, AND ARGUED THAT IT COULD LEGALLY SERVE IN SUCH CAPACITY.

As of January 5, 2022, CDM was still pursuing appointment to trustee, and representing to at least one Probate Court that it was authorized to serve in that role. Defendants protest this fact, amounting it to a false accusation against Defendants, and their counsel. However, the filing made by CDM and Stephen Mantell, collectively as "Respondent," in Georgetown Probate Court on January 5, 2022, speaks for itself:

> 11. Although Respondent admits that there is a pending lawsuit in Georgetown County by the Board of Financial Institutions, **that court has not determined that CDM Corporation or Stephen Mantell may not serve as Trustee in any matter.** The Georgetown case presents a novel issue of law in South Carolina. In fact, the court there specifically denied the Board of Financial Institution's Motion for Summary Judgment on the issue of capacity to serve. Additionally, and importantly, there is no allegation within the Georgetown case by the Board of Financial Institutions that an individual, here Mantell, may not serve as trustee.
>
> […]
>
> Wherefore, having fully responded to the Petition, Respondent requests… that the court **confirm the installation of Stephen Mantell or CDM Corporation as the Second Successor Trustee** directed by the Trust Agreement.

Pl. Motion, Ex. B (CDM Answer).

It is regrettable that Defendants' counsel interprets this fact as an accusation against him. However, CDM's January 5, 2022 representation to the Probate Court is a fact that must be taken into consideration by this Court, as the evidence directly refutes the spirit of this Court's finding. Assertions such as those above would not be made by a party who "removed all references to trusteeships from his companies' promotional material," and "retained counsel to end or move those trusteeships to his name personally." Pl. Motion, Ex. A (Summary Judgment Order).

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The evidence proves that CDM continued to seek trustee appointment during this litigation, and representing to others that it could do so lawfully, and the Court's Order should be amended accordingly.

CONCLUSION

For these reasons, along with those stated in BOFI's Motion, BOFI respectfully asks that this court reconsider, alter or amend its order to find that "trust business" which requires BOFI's approval, as referenced in S.C. Code Ann. § 34-21-10, includes serving in non-trustee fiduciary roles, and that Defendants, by serving as conservator, guardian, personal representative, and agent, have violated Section 34-21-10 by doing so without BOFI's prior approval.

By: s/ Shawn D. Eubanks
Shawn. D. Eubanks (S.C. Bar No. 78370)
William J. Condon, Jr. (S.C. Bar No. 72632)

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Attorneys for Board of Financial Institutions

November 29, 2022
Columbia, South Carolina

RECEIVED
Jun 29 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 29, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

APPELLANT'S BRIEF

July 7, 2023

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Attorneys for Appellant South Carolina Board of Financial Institutions

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a. When construed in context, the term "trust business" includes serving as conservator, guardian, personal representative, and agent. 13

b. The ordinary and popular meaning of "trust business" includes serving as conservator, guardian, personal representative, and agent. 16

II. The Master-in-Equity erred in failing to give deference to the Board of Financial Institutions' interpretation regarding the definition of "trust business" as used in S.C. Code Ann. § 34-21-10……21

III. The Master-in-Equity erred in finding that the probate court "regulates" other fiduciaries, and that the Board of Financial Institutions cannot regulated entities serving in these capacities because the roles are "codified in the Probate Code." 23

IV. In the alternative, even if the Master-in-Equity is correct that trust business must involve the administration of a trust, the Master-in-Equity erred in holding the fiduciary roles held by Respondent did not involve the administration of a trust, and therefore constitute unlawful trust business. 29

CONCLUSION 31

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ISSUES ON APPEAL

I. Did the Master-in-Equity err when it defined the term "trust business," as regulated by the Board of Financial Institutions pursuant to S.C. Code Ann. § 34-21-10, *et seq*., to exclude serving as conservator, guardian, personal representative, or agent, when the context of the term in statute, as well as the usual and customary meaning of "trust business," includes these fiduciary roles?

II. Did the Master-in-Equity err in failing to give deference to the Board of Financial Institutions interpretation regarding the definition of "trust business" as used in S.C. Code Ann. § 34-21-10?

III. Did the Master-in-Equity err in finding that the probate court "regulates" other fiduciaries, and that the Board of Financial Institutions cannot regulated entities serving in these capacities because the roles are "codified in the Probate Code?"

IV. In the alternative, even if the Master-in-Equity is correct that trust business must involve the administration of a trust, did the Master-in-Equity err in holding that the fiduciary roles held by Respondent did not involve the administration of a trust, and therefore constitute unlawful trust business?

STATEMENT OF THE CASE

Appellant South Carolina Board of Financial Institutions ("BOFI") initiated this action against Respondents CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("GFS") (collectively, "Respondents") in Circuit Court in Georgetown County on October 26, 2020. **(R. pp. 15-23)** (Complaint).

In its Complaint, BOFI alleged that Respondents were conducting unauthorized trust business in violation of S.C. Code Ann. § 34-21-10, *et seq*., by serving as trustee, conservator, guardian, personal representative, and agent, and by holding themselves out as offering these fiduciary services. Id. Respondents conceded that they had served or held themselves out as serving in all of these fiduciary roles, but counterclaimed, seeking declaratory judgment that "trust business" means serving as a trustee of a trust instrument, and that serving in other fiduciary roles did not constitute trust business, and could not be regulated by BOFI. **(R. pp. 24-35)** (Answer).

The case was referred to Hon. Joe M. Crosby, Master-in-Equity for Georgetown County, on March 11, 2022. **(R. pp. 1-3)** (Order of Reference). As the undisputed evidence proved that Respondents had served or held themselves out as serving in all of these fiduciary capacities, the parties filed opposing Motions for Summary Judgment on August 22, 2022. **(R. pp. 77-221)** (Motions for Summary Judgment).

The Master-in-Equity rendered his decision without a hearing, and issued an Order on November 3, 2022, partially granting each party's motion. **(R. pp. 4-12)** (Summary Judgment Order). The Master-in-Equity found in favor of BOFI, holding that Respondents had conducted unauthorized trust business by serving as trustee, and that they must be enjoined from continuing to do so. Id. The Master-in-Equity found in favor of Respondents by holding that the "trust business" regulated by BOFI must involve a trust, and that Respondents' serving as conservator,

guardian, personal representative, or agent did not constitute "trust business," which would require BOFI's prior written approval. Id. The Master-in-Equity further held that the "non-trustee" fiduciary roles are regulated by the probate courts and, therefore, BOFI cannot regulate entities serving in these capacities. Id.

BOFI timely filed a Motion for Partial Reconsideration, Alteration or Amendment on November 14, 2022, on the grounds that the Master-in-Equity's narrow definition of "trust business" failed to acknowledge the language and context of the statute, as well as the ordinary and popular significance of that term, and also that the probate court's jurisdiction in appointing certain fiduciaries did not contradict or negate BOFI's regulation of entities serving as conservator, guardian, personal representative, or agent. **(R. pp. 222-260)** (Rule 59 Motion). BOFI also argued that its interpretation of the law, as articulated in its "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina," should have been given deference. Id.; **(R. pp. 100-102)** (Policy Statement).

In its Order dated December 20, 2022, the Master-in-Equity denied BOFI's motion without a hearing. **(R. pp. 13-14)** (Rule 59 Order). By a Notice of Appeal filed and served on January 5, 2023, BOFI appealed the Master-in-Equity's decision to this Court.

STANDARD OF REVIEW

Per S.C. Code Ann. § 14-15-85, "When some or all of the causes of action in a case are referred to a master-in-equity… an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules."

In the present case, the Respondents have admitted to the conduct alleged by BOFI, and there is no dispute as to the material facts. This case is purely a matter of statutory interpretation. Statutory interpretation is a question of law subject to de novo review. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs In Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

STATEMENT OF FACTS

The Board of Financial Institutions refers to both an agency of the State of South Carolina ("Agency"), and the eleven-member regulatory board ("Board") which it serves (collectively "BOFI"). The Agency has two divisions: the Consumer Finance Division, and the Banking Division. The Banking Division, headed by the Commissioner of Banking, Kathy Bickham (formerly Richards H. Green), is tasked with the supervision of, among other types of financial institutions, "trust companies and fiduciary corporations." S.C. Code Ann. § 34-21-20.

Respondent CDM is a domestic corporation located in Georgetown, South Carolina, co-owned by Stephen Mantell and his wife, Candida Mantell. Respondent GFS is a domestic limited liability company with Mr. Mantell as the sole member, also located in Georgetown.

At all times relevant to this, action Respondents have served as trustee[1], conservator, guardian, personal representative, and agent pursuant to a power of attorney, and held themselves out as offering these trust business services to the general public in this state.

Before a non-exempt entity conducts trust business in South Carolina, that entity must seek and obtain prior approval from the Board. Thereafter, entities conducting trust business are subject to regular examinations by BOFI. It has been BOFI's longstanding position and statutory interpretation that an entity serving or offering to serve the general public as conservator, guardian, personal representative, or agent, conducts the trust business BOFI is obligated to license and regulate. **(R. p. 52)** (Green Aff. ¶ 6); see also **(R. pp. 100-102)** (Policy Statement).

[1] The undisputed evidence proves that Respondents served as trustee and held themselves out to the public as a trustee for hire; however, this activity has been properly enjoined by the trial court and is no longer at issue. The subject of this appeal is focused on Respondents' serving as conservator, guardian, personal representative, and agent.

CDM admits that it serves as conservator, guardian, personal representative, and power of attorney for individuals in South Carolina. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit). GFS also admits that it currently serves as guardian in South Carolina. Id. Both Respondents also admit that they hold themselves out to the public as providing the services of conservator, guardian, personal representative of an estate, and power of attorney. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit). On and before the date this action was instituted, Respondents' shared website held the companies out to the public as providing trust business, advertising the services of "power of attorney," "personal representative," "guardianship," and "conservator." **(R. p. 53)** (Green Aff., ¶ 10); see also **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit). The undisputed evidence and admissions in this case indicate that Respondents have conducted, and continue to conduct the following activities, any one of which constitute trust business requiring BOFI's written approval prior to its undertaking:

	GFS	CDM
Serves as Guardian	✓	✓
Held/holds itself out as Guardian	✓	✓
Serves as Conservator		✓
Held/holds itself out as Conservator	✓	✓
Serves as Personal Representative of Estates		✓
Held/holds itself out as Personal Representative of Estates	✓	✓
Serves as Attorney-in-fact pursuant to a Power of Attorney		✓
Held/holds itself out as Agent pursuant to a Power of Attorney	✓	✓

See **(R. pp. 161-169)** (Def. Resp. to Pl. Req. to Admit).

Despite conducting this extensive trust business, Respondents admit that they have never made a written application to the Board to conduct a trust business in South Carolina, nor have

they received written permission from the Board to conduct a trust business in South Carolina. **(R. pp. 161-163)** (Def. Resp. to Pl. Req. to Admit).

In light of Respondents' serving as trustee, conservator, guardian, personal representative, and agent, BOFI initiated this action to enjoin Respondents from serving in any of these capacities because Respondents' fiduciary activities constituted unlicensed and unauthorized trust business. **(R. pp. 50-54)** (Green Aff.). Pursuant to the Master-in-Equity's Summary Judgment Order, Respondents are now permanently enjoined from serving as a trustee of a trust; however, the Master-in-Equity declined to enjoin Respondents from serving as conservator, guardian, personal representative, and agent. **(R. pp. 4-12)** (Summary Judgment Order).

BOFI now seeks review from this Court to determine whether Respondents' remaining fiduciary activities of conservator, guardian, personal representative, and agent constitute unauthorized trust business, in violation of the law.

ARGUMENT

I. THE MASTER-IN-EQUITY ERRED WHEN IT DEFINED THE TERM "TRUST BUSINESS," AS REGULATED BY THE BOARD OF FINANCIAL INSTITUTIONS PURSUANT TO S.C. CODE ANN. § 34-21-10, ET SEQ., TO EXCLUDE SERVING AS CONSERVATOR, GUARDIAN, PERSONAL REPRESENTATIVE, OR AGENT, BECAUSE THE CONTEXT OF THE TERM IN STATUTE, AS WELL AS THE USUAL AND CUSTOMARY MEANING OF "TRUST BUSINESS," INCLUDES THESE FIDUCIARY ROLES.

The Master-in-Equity erred in holding that the "trust business" regulated by BOFI did not include serving as conservator, guardian, personal representative, and agent, and holding that Respondents' serving in these capacities does not constitute "trust business" requiring BOFI's prior written approval.

Pursuant to S.C. Code Ann. § 34-21-10,

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the State Board of Bank Control[2] and receiving written approval from the Board… Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

S.C. Code Ann. § 34-21-10 prohibits all entities, other than natural persons[3] and national banks, from conducting "trust business" unless they have first obtained prior approval from BOFI's Board.

As the Master-in-Equity's Summary Judgment Order notes, the term "trust business" is not defined in statute, nor has the term been defined by South Carolina courts. However, based on the context of S.C Code Ann. § 34-21-10, *et seq*., as well as numerous other statutory provisions, and

[2] The State Board of Bank Control is now the State Board of Financial Institutions.

[3] Per the plain language of the statute, BOFI does not license or regulate individuals or "natural persons" serving in fiduciary roles. Natural persons are free to accept fiduciary appointments without any licensure or oversight from BOFI.

evidence showing the ordinary usage of the term, "trust business" refers to the undertaking of a broad range of fiduciary activities, including trustee, as well as other fiduciary roles[4] such as personal representative, guardian, conservator, and agent pursuant to a power of attorney.

The Master-in-Equity erroneously held that the "trust business" which BOFI is obligated to license and oversee, is limited to "business involved with trusts," and that BOFI does not have approval or regulatory authority over entities serving in other fiduciary roles. **(R. pp. 4-8)** (Summary Judgment Order). In defining "trust business," the Master-in-Equity incorrectly cites the definition of a "trust" as set forth in the Probate Code (Title 62)— a definition which necessarily excludes other fiduciary arrangements in order to clearly define a trust instrument— despite the fact that this definition clearly purports to define a legal instrument rather a type of financial business, and furthermore serves only as a definition "in this Code" (i.e. the Probate Code). **(R. p. 6)** (Summary Judgment Order); see also S.C. Code Ann. § 62-1-201. In reaching this incorrect definition, the Master-in-Equity ignores ordinary and popular usage of the term "trust business," as well as the context of the term in the Banking Code (Title 34), which, as discussed more thoroughly below, repeatedly and consistently includes references to fiduciary roles beyond trustee.

The Master-in-Equity's interpretation of "trust business" fails when the rules of statutory construction are applied. Moreover, the Master-in-Equity's decision renders numerous statutory provisions ambiguous or meaningless; whereas the application of a contextual, ordinary and popular meaning of trust business gives full effect to all applicable statutes.

[4] For the sake of brevity, this brief refers to the roles of conservator, guardian, personal representative, and agent, collectively as "other fiduciary roles." However, as discussed more fully in Section IV *infra*, there is no significant practical distinction between these roles and that of trustee.

a. When construed in context, the term "trust business" includes serving as conservator, guardian, personal representative, and agent.

The statutory context of the term "trust business" confirms that BOFI-regulated trust business includes acting not just as trustee, but also as conservator, guardian, personal representative, and agent. Serving in any one of these roles without BOFI's prior written approval constitutes unauthorized and unlicensed trust business in violation of S.C. Code Ann. § 34-21-10.

A statute must receive a practical and reasonable interpretation consistent with the "design" of the legislature. Smith v. S.C. Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "The terms must be construed in context and their meaning determined by looking at the other terms used in the statute." Hinton v. S.C. Dep't of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). "[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." S.C. Coastal Council v. S.C. Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

When "construed in context… by looking at the other terms used in the statute," (Hinton, 357 S.C. at 333), State law confirms that BOFI-regulated "trust business" extends beyond the administration of trust instruments alone, and includes all types of fiduciary appointments.

For example, S.C. Code Ann. § 34-21-10 declares no person shall conduct "trust business" without BOFI's prior approval, but then provides an exception: this rule does not prevent a natural person or national bank "from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." The inclusion of each of these fiduciary activities, listed to establish an exception to the requirement for trust business licensure, strongly implies if

not clearly conveys, that these activities would otherwise constitute trust business, if not undertaken by an exempt person. To view otherwise would render the final clause of this Section "surplusage or superfluous." Decker, 322 S.C. at 219, 471 S.E.2d at 462 (1995).

Similarly, S.C. Code Ann. § 34-21-210, *et seq*., sets forth rules, which BOFI enforces, regarding trust institutions' administration of common trust funds. In this context, S.C. Code Ann. § 34-21-210(1) defines "trust institution" to include "…any trust company, authorized to act in a fiduciary capacity in this State… under the supervision of the Comptroller of the Currency of the United States, or the Federal Reserve System, or the State Board of Bank Control of South Carolina." That same section defines "fiduciary" to include serving as "trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent." S.C. Code Ann. § 34-21-210(2). This Section echoes Section 34-21-10, confirming that trust companies must be "authorized" by BOFI to serve in the listed fiduciary roles.

Likewise, S.C. Code Ann. § 34-15-10 provides that a "trust company" must have at least $250,000 in capital to serve as "executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property." Here again, this Banking Code provision sets forth a rule regarding BOFI-regulated trust business which explicitly includes other fiduciary appointments.

Moreover, when a "trust company" is sold or merges, all of the powers and duties "regarding each fiduciary capacity or other relationship transferred, whether created by will, indenture, trust, court order, agreement, or other means,"—not just trust instruments— shall

transfer to the buyer or surviving entity. S.C. Code Ann. § 34-3-850. Again, the context of trust business indicates that BOFI's regulation and oversight includes fiduciary roles other than trustee.

When construed in context of the South Carolina Code provisions above, one must conclude that the terms "trust business," "trust institution," and "trust company" refer to serving as conservator, guardian, personal representative, agent and/or other fiduciary roles. See Hinton, 357 S.C. at 333, 502 S.E.2d at 338 (Ct. App. 2004). Such a reading "harmonizes with its subject matter and accords with its general purpose." Id. If serving in fiduciary roles beyond trustee does not constitute "trust business" or the work of a "trust company" or "trust institution," then other fiduciary roles would not be listed repeatedly, by name, in connection with it, and the rules for serving in these roles would not be articulated in the Banking Code for BOFI to enforce.

Rather than using the definition of a trust instrument set forth in the Probate Code, a more fitting definition of the word "trust" in "trust business" refers to the "the obligation or responsibility imposed on a person in whom confidence or authority is placed: a position of trust." www.dictionary.com/browse/trust. In the banking industry, "trust business" refers broadly to this "position of trust" – the trust relationship inherent in fiduciary arrangements. In fact, Black's Law Dictionary's definition of "trust relationship" equates a trust relationship with a fiduciary relationship: "An association based on one person's reliance on the other person's specialized training; esp., FIDUCIARY RELATIONSHIP. — Also termed fiducial relationship." Black's Law Dictionary (11th ed. 2019).

Applying this definition of "trust business" to the language of Title 34 relieves the tension and contradiction created by the Master-in-Equity's narrow rendering. When "trust business" is defined as serving as a hired fiduciary, there is no longer a question of why the prohibition on unauthorized trust business in Section 34-21-10 would exempt certain persons from BOFI's

approval prior to qualifying and acting in other roles such as "executor, administrator, guardian, committee or in any other fiduciary capacity," rather than just "trustee." There is no longer a question of why a "trust institution" must be authorized by BOFI to serve as "executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent," rather than just "trustee." S.C. Code Ann. § 34-21-210(1) and (2). The inclusion of business capital requirements for trust companies serving as conservator, guardian, and personal representative is no longer confounding. S.C. Code Ann. § 34-15-10.

On the other hand, limiting the trust business regulated by BOFI to business involving a trust instrument renders the language of these statutes meaningless and superfluous—and the effect of the Master-in-Equity's decision is that those words, spoken by the General Assembly, will be voided without justification.

The term "trust business," when "read in conjunction with the purpose of the whole statute and the policy of the law," includes serving as conservator, guardian, personal representative, and agent. S.C. Coastal Council, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). Accordingly, BOFI respectfully asks this Court to find that Respondents have conducted unlawful trust business by serving in these roles, and to enjoin them from such further activity.

b. The ordinary and popular meaning of "trust business" includes serving as conservator, guardian, personal representative, and agent.

Trust business may not be explicitly defined in South Carolina law, but the ordinary and popular usage or treatment of the term, and the corresponding regulation of such business by state and federal banking regulators, includes serving in both trustee and other fiduciary roles.

"Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation." Santee Cooper Resort v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989).

The ordinary and popular meaning of "trust business"—which BOFI is statutorily bound to license, supervise, and regulate— includes the fiduciary roles of conservator, guardian, personal representative and agent.

The South Carolina Attorney General's office has analyzed Section 34-21-10, and indicated its opinion that a trust company is, an entity "formed for the purpose of taking, executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc." and that this definition is "consistent with [the definitions] set forth in Title 34." **(R. p. 215)** Op. S.C. Att'y Gen (Feb. 9, 1996); 1996 WL 93998 (S.C.A.G).

South Carolina courts have also articulated a historical understanding that the trust business approved and regulated by BOFI includes fiduciary roles other than merely serving as a trustee. In Bowen v. Strauss, 175 S.C. 23, 23, 178 S.E. 252, 253 (1935), the court noted that the law at the time "empowered banks and trust companies to become executors, guardians, trustees, etc…"[5] See also Monteith v. Harby, 193 S.C. 349, 8 S.E.2d 629 (1940). In American Trust Co., Inc. v. S.C. State Bd. of Bank Control, 381 F. Supp. 313 (D.S.C. 1974), the Federal District Court considered a trust company's challenge to a law, enforced by BOFI, which prohibited foreign corporations from serving as "executor, administrator, or testamentary trustee" in South Carolina. In that case, the court noted that "The plaintiffs do not question the power of South Carolina to prohibit foreign corporations from serving as executors or administrators of the estates of South Carolina decedents. Nor do they challenge any South Carolina statutes governing the conduct of fiduciaries and prescribing their duties." Id. The court affirmed that "Undoubtedly, South Carolina [through BOFI] has a legitimate interest in assuring that corporate fiduciaries serve the public faithfully.

[5] Section 5727 of the 1930 South Carolina Code provided that a corporation required the approval of the Bank Examiner (now the Commissioner of Banking) prior to serving in these roles, as well as "agent or attorney in fact."

Laws prescribing the fiduciaries' financial resources, governing their conduct, and defining their responsibilities are appropriate means of controlling trust companies." Id.

As further evidence of the ordinary and popular meaning of "trust business," per the affidavit of Richards Green, prior Commissioner of Banking, during his twenty plus years serving at BOFI, "the Board and Agency have consistently interpreted the meaning of trust company operations to include serving as trustee, guardian, conservator, personal representative of an estate, and other fiduciary capacities." **(R. p. 52)** (Green Aff., ¶6). BOFI has also taken action to enforce this understanding of the term "trust business." Prior to the present litigation, on April 28, 2020, the Board executed a Consent Order in the matter of J. Earle Financial, LLC, finding that the company had conducted unauthorized trust business in violation of S.C. Code Ann. § 34-21-10 by advertising that it "serves as a fiduciary to administer assets in conservatorships and estates," and by serving as a personal representative of an estate. **(R. p. 57)** (J. Earle Financial Consent Order).

Additionally, Jamison Hinds, General Counsel for Colonial Trust Company, a South Carolina state-chartered trust company operating under BOFI's approval, confirms his understanding that Respondents serve as "trustee, conservator, guardian, personal representative of an estate, and healthcare attorney-in-fact," and that "entities conducting these fiduciary activities should be closely regulated by BOFI." **(R. p. 48)** (Hinds Aff., ¶4-5).

In addition to South Carolina's usage, the ordinary and popular meaning of "trust business" is supported by the law of every state and federal regulator in the United States.

The Office of the Comptroller of the Currency ("OCC"), the federal banking regulator, has issued guidance stating that national banks, whether depository or not, must have "trust powers" to serve in any fiduciary capacity. See **(R. pp. 253-260)** (OCC Interpretive Letter #1176). Federal law provides that the OCC may authorize a national banking corporation to serve as "trustee,

executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located." 12 U.S.C. § 92a(a). The OCC has clarified that serving in any one of these roles constitutes trust business: "A national bank that only performs one fiduciary capacity under 12 U.S.C § 92a would need trust powers." **(R. p. 255)** (OCC Interpretive Letter #1176).

Likewise, despite a broad range of wording and formatting, all fifty states of the United States prohibit trust business without prior approval and continued oversight by the state's banking regulator, the conducting of which includes the fiduciary roles of trustee, conservator, guardian, personal representative of estates, and agent. A few of the more succinct examples are as follows:

> •Arizona: "'Trust business' means the holding out by a person to the public at large by advertising, solicitation or other means that the person is available to act as a fiduciary in this state.… 'Fiduciary' means a personal representative, administrator, guardian, conservator, trustee, agent or other person who acts in a fiduciary capacity." Ariz. Rev. Stat. Ann. § 6-851.
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> •Massachusetts: "'Trust business'--any activity conducted by an executor of a will or codicil, an administrator with the will annexed, an administrator of the estate of any person, a guardian, a conservator, or a trustee under a will or instrument creating a trust for the care and management of property, while he is acting in such a fiduciary capacity." Mass. Gen. Laws Ann. ch. 203, § 4A (West).
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> •New Jersey: "'For the purposes of this section, 'trust business' means holding out to the public by advertising, solicitation or other means that a person or entity is available to perform any of the services of a trustee or fiduciary in this State or another state, and includes acting as a trustee, testamentary trustee, fiduciary, executor or guardian…" N.J. Stat. Ann. § 17:9A-316 (West).
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> •Ohio: "'Trust business' means accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business." Ohio Rev. Code Ann. § 1111.01(I) (West).
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> •Utah: "'Trust business' means, except as provided in Subsection (1)(c), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver,

depositary, or trustee under appointment as trustee for any purpose permitted by law…" Utah Code Ann. § 7-5-1(b) (West).

(R. pp. 120-159) (Trust Business Definitions By State).

Additionally, as of June 19, 2018, BOFI entered into the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions. This Agreement serves as a compact between states for regulation of state-chartered trust business, and currently 49 states have entered into it. In the Agreement, state-regulated "trust business" includes "acting as a fiduciary," and "act as a fiduciary" includes acting "pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person," and "administer[ing] in any other fiduciary capacity real or personal property." **(R. pp. 107-109)** (CSBS Cooperative Agreement, Section 1.1).

All of these materials and resources are consistent in their contemplation of the term "trust business," and they confirm that the ordinary and popular significance of the term is broader than simply serving as a trustee. To the contrary, "trust business" clearly includes serving as conservator, guardian, personal representative, and agent.

On these grounds, BOFI requests that this Court reverse the trial court's narrow and erroneous definition of trust business and find that Respondents have conducted unauthorized trust business in violation of S.C. Code Ann. § 34-21-10 by serving as conservator, guardian, personal representative, and agent, and enjoin them from continuing such unauthorized trust business.

II. THE MASTER-IN-EQUITY ERRED IN FAILING TO GIVE DEFERENCE TO THE BOARD OF FINANCIAL INSTITUTIONS' INTERPRETATION REGARDING THE DEFINITION OF "TRUST BUSINESS" AS USED IN S.C. CODE ANN. § 34-21-10.

BOFI has issued written guidance which clearly defines "trust business" as used in S.C. Code Ann. § 34-21-10 to include the fiduciary roles of conservator, guardian, personal representative, and agent. **(R. pp. 101-102)** (BOFI Policy Statement). The Master-in-Equity erred by failing to give BOFI's interpretation the deference to which it is entitled, despite finding that the law is silent or ambiguous as to the meaning of the term "trust business."

"If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Sierra Club v. S.C. Dep't of Health & Env't Control, 426 S.C. 236, 256, 826 S.E.2d 595, 606 (2019). South Carolina courts "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute [or regulation].'" Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 719 (2014) (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 2782 (1984)). "Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992).

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs In Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

BOFI is the agency responsible for approving entities to conduct a trust business in South Carolina, and supervising and examining those entities. S.C. Code Ann. §§ 34-21-10 and 20.

Entities approved to conduct a trust business are "subject to examination" by BOFI, and "are further subject to rules and regulations promulgated by the Board." S.C. Code Ann. § 34-21-20.

On June 1, 2022, BOFI's Board formalized its interpretation by issuing a "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina." **(R. pp. 101-102)**. In that guidance, the Board affirms BOFI's longstanding industry and regulatory interpretation of the phrase "trust business" as used in S.C. Code Ann. § 34-21-10:

> The Board interprets the phrase "conduct a trust business" as used in S.C. Code Ann. § 34-21-10, to include acting as trustee of a trust (as defined by S.C. Code Ann. § 62-1-201(49)), executor, administrator, or personal representative (as defined by S.C. Code Ann. § 62-1-201(33)), guardian (as defined by S.C. Code Ann. § 62-5-101(9)), conservator (as defined by S.C. Code Ann. § 62-1-201(6)), managing agent (as defined in S.C. Code Ann. § 34-21-210(7)). Additionally, serving as an agent (as defined by S.C. Code Ann. § 62-8-102(1)), also constitutes conducting a trust business.
>
> The Board further interprets the phrase "conduct a trust business" to include holding oneself out as providing or offering the act of serving in these fiduciary roles to the public in South Carolina.

The Policy Statement was reviewed and approved unanimously by the Board's eleven members, nine of whom are actively engaged in financial business, and all of whom are obligated to "represent the best interests of the public" (S.C. Code Ann. § 34-1-20).

The Policy Statement is entirely consistent with state law. Furthermore, the Policy Statement is consistent with Board action taken prior to its discovery of Respondents' unauthorized trust business, as well as the numerous state and federal resources and other materials discussed *supra*. See e.g. **(R. pp. 120-159)** (Trust Business Definitions By State), **(R. pp. 253-260)** (OCC Interpretive Letter #1176), **(R. pp. 56-61)** (J. Earle Financial Consent Order); **(R. pp. 107-109)** (CSBS Cooperative Agreement, Section 1.1). The unanimity among these sources defining trust business to include fiduciary business beyond trusteeship is confirmation that the BOFI Policy Statement is worthy of deference, and there is no compelling reason to overturn it.

On these grounds, BOFI requests that this Court give deference to BOFI's interpretation, as articulated in its Policy Statement. Applying the definition of trust business articulated in BOFI's Policy Statement, this Court should find that Respondents have conducted unauthorized trust business in violation of S.C. Code Ann. § 34-21-10 by serving as conservator, guardian, personal representative, and agent, and enjoin them from continuing such trust business.

III. THE MASTER-IN-EQUITY ERRED IN FINDING THAT THE PROBATE COURT "REGULATES" OTHER FIDUCIARIES, AND THAT THE BOARD OF FINANCIAL INSTITUTIONS CANNOT REGULATE ENTITIES SERVING IN THESE CAPACITIES BECAUSE THE ROLES ARE "CODIFIED IN THE PROBATE CODE."

The Master-in-Equity erred in finding that the probate court "regulates" so-called "non-trustee" fiduciary activity, and that such "regulation" negates or nullifies BOFI's statutory duty to regulate entities serving as conservator, guardian, personal representative, and agent. **(R. p. 10)** (Summary Judgment Order). When proper statutory construction is applied, the jurisdiction of the probate court and the regulatory authority of BOFI can, and therefore must, be reconciled, allowing the probate courts to adjudicate protective proceedings and matters of estate administration while BOFI oversees and regulates the business activities of entities serving in fiduciary capacities.

"Nowhere in Chapter 21 of Title 34, the chapter entitled 'Banks and Corporations Doing Trust Business' is there any suggestion, annotation or reference that indicates that either the Legislature or the Code Commissioner thought that the Trust Statute could not stand side by side the Probate Code." Op. S.C. Att'y Gen (Aug. 2, 1995); 1995 WL 803721.

"Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88–89, 533 S.E.2d 578, 583 (2000). "It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Justice v.

Pantry, 330 S.C. 37, 43–44, 496 S.E.2d 871, 874 (Ct.App.1998) quoting State v. Hood, 181 S.C. 488, 491, 188 S.E. 134, 136 (1936).

The probate court is created by and derives its authority from statute, and it must act in accordance with the South Carolina Constitution and the laws of this State. The Supreme Court of South Carolina has stated "…we have definitively recognized that the probate court is not a constitutional court." Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011). "[T]he probate court has only such jurisdiction as vested in it by the General Assembly." Id. citing Davis v. Davis, 214 S.C. 247, 52 S.E.2d 192 (1949). This concept is derived directly from the South Carolina Constitution, which states that "Jurisdiction in matters testamentary and of administration ... shall be vested as the General Assembly may provide, consistent with the provisions of Section 1 of this article." S.C. Const. art. V, § 12. "Thus, the extent of the probate court's jurisdiction is defined by our legislature." Judy, 393 S.C. at 169, 712 S.E.2d at 412 (2011).

The Master-in-Equity incorrectly asserts that the Probate Code stands alone, voiding any provision of law which may interact with the jurisdiction of the probate courts, and that the probate court "regulates" conservators, guardians, personal representatives, and agents:

> The South Carolina Probate Code specifically sets forth the requirements and regulations for, and the probate court's appointment of, non-trustee fiduciary roles including conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor.[6] Because these roles are codified in the Probate Code and are regulated by the probate courts, the Board of Financial Institutions does not control and regulate these functions. These areas are outside BOFI's jurisdiction.

[6] The trial court's distinction between trustee and court-appointed ("non-trustee") fiduciary roles is fundamentally flawed. The trial court holds that BOFI may regulate trustees; yet, a probate court may appoint a trustee. S.C. Code Ann. 62-7-201(a)(4). The trial court also holds that BOFI may not regulate court-appointed "non-trustee" fiduciaries, but includes attorney-in-fact (i.e. agent) in that category, even though Probate Code does not contemplate the probate court's power of appointment of an agent. See S.C. Code Ann. § 62-8-102, *et seq.*

(R. p. 10) (Summary Judgment Order).

The probate court does indeed have jurisdiction to hear and preside over certain matters concerning fiduciaries, in accordance with its own statutory authority. The probate court has jurisdiction over "protective proceedings and guardianship proceedings," (S.C. Code Ann. § 62-1-302(a)(2)(i)), as well as "estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons…" (S.C. Code Ann. § 62-1-302(a)(1)). In order to exercise authority as to any person, a probate court must have jurisdiction over the subject matter of the case or controversy pursuant to the Probate Code, and venue must be proper in the county of that probate court.

When a probate court has proper jurisdiction, it may appoint a "person"[7] to serve as conservator, guardian, and personal representative. A "person" must be qualified to be appointed as a fiduciary. To serve as personal representative, a person must "be appointed by order of the court, qualify, and be issued letters." S.C. Code Ann. § 62-3-103. In appointing a guardian and conservator, "the court shall consider persons who are otherwise qualified…" S.C. Code Ann. §§ 62-5-308(A) and 62-5-408(A). By referencing these "other" qualifications, the Probate Code acknowledges that more specific statutes regarding a persons' qualifications for fiduciary appointment exist elsewhere in the South Carolina Code or case law. Section 34-21-10, which

[7] The Probate Code defines a "person" broadly, to include "an individual, corporation… limited liability company… or any other legal or commercial entity." S.C. Code Ann. § 62-1-201(32). A "person" may serve as a guardian (S.C. Code Ann. § 62-5-308), a conservator (S.C. Code Ann. § 62-5-408), a personal representative of an estate (S.C. Code Ann. § 62-3-203), and an agent (S.C. Code Ann. § 62-8-102).

requires non-exempt entities to obtain prior approval from BOFI to serve as a fiduciary, is one such "other" qualification.

The Banking Code works hand-in-hand with the Probate Code by establishing BOFI's approval as a prerequisite for non-exempt entities to qualify for and accept probate court appointments. Section 34-21-10 prohibits a non-exempt entity from accepting a probate court fiduciary appointment without BOFI's prior approval in the same way that a person without a medical license from the State Board of Medical Examiners cannot accept a probate court's appointment to serve as a physician to examine an alleged incapacitated person. S.C. Code Ann. § 40-47-30 ("A person may not practice medicine in this State unless the person is twenty-one years of age and has been authorized to do so pursuant to the provisions of this article.") Despite both statutory provisions existing outside the Probate Code, there is nothing about either of these statutory requirements that supplants any power of the probate court.

Even if the probate court appoints an unqualified entity to a fiduciary role, a non-exempt entity violates S.C. Code Ann. § 34-21-10 by accepting and acting under such appointment without prior BOFI approval. Nothing in the Probate Code requires or allows a non-exempt person to accept a probate court appointment without BOFI's prior approval to conduct trust business pursuant to S.C. Code Ann. § 34-21-10. Moreover, a probate court lacks authority to force a person to accept a fiduciary appointment. Acceptance of probate court appointments is voluntary and must be undertaken lawfully. A person must file a "statement of acceptance of the duties of office," in order to qualify for an appointment as personal representative. S.C. Code Ann. § 62-3-601. Likewise, a person must accept an appointment to serve as guardian (S.C. Code Ann. § 62-5-305) and conservator (S.C. Code Ann. § 62-5-411), and an agent (S.C. Code Ann. § 62-8-113(a)).

Stated differently, the Banking Code simply establishes specific qualifications, as generally acknowledged by the Probate Code, which act as an exception to the general rule that the probate court may appoint a "person" to certain fiduciary roles, or that a "person" may accept such an appointment.

"Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." Capco of Summerville, Inc. v. J.H. Gayle Const. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

The Banking Code addresses the qualification of non-exempt entities serving in fiduciary appointments "in a more specific and definite manner," and therefore must be "considered an exception to, or a qualifier of, the general statute and given such effect." Capco of Summerville, 368 S.C. at 142, 628 S.E.2d at 41 (2006). In fact, the Banking Code directly acknowledges and incorporates the probate court's general power of appointment, while also establishing BOFI's specific oversight of the qualifications for a trust company to serve under such a court appointment. S.C. Code Ann. § 34-15-10 provides that a

> …trust company with at least two hundred fifty thousand dollars total unimpaired capital may be appointed executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the appointment as a legally qualified person…"

This Section sets out the specific requirements for persons conducting BOFI-approved trust business to be "legally qualified" for appointment as personal representative, guardian, conservator (i.e. "administrator of the estate of any person") while also acknowledging that the probate court has "jurisdiction of the appointment." Id. Section 34-15-10 confirms that BOFI's oversight is

intended to serve as a "qualifier of" the Probate Code's provisions regarding fiduciary appointments because the licensure "deals with the identical issue in a more specific and definite manner." Capco of Summerville, 368 S.C. at 142, 628 S.E.2d at 41 (2006).

Notwithstanding matters of statutory construction and interpretation, there is good reason for BOFI to regulate an entity's fiduciary business even when that entity is appointed by and under the jurisdiction of the probate court. The probate court lacks the authority to examine or investigate any person or entity. Nothing in the Probate Code indicates that fiduciaries are overseen or "regulated" by South Carolina Probate judges. In fact, the court is expressly excused from such oversight: "Nothing herein shall require the court to oversee the plan of care [implemented by a guardian]." S.C. Code Ann. § 62-5-309(B). "Nothing herein shall require the court to oversee or approve the conservator's investment choices." S.C. Code Ann. § 62-5-414(B).

By comparison, BOFI's authority to regulate the safety and soundness of operations of non-exempt persons conducting trust business is not predicated upon individual "proceedings" or "determinations," nor is BOFI's jurisdiction limited by controversy, or by county.

In the present case, Stephen Mantell, utilizing the names and corporate veils of both CDM Corporation and Guardian Fiduciary Services, LLC, has sought and accepted fiduciary appointments by the probate court for numerous individuals, in the courts of multiple counties, before multiple probate judges, as well as doing business as "Senior Helpers." **(R. pp. 245-249)** (Appointment of Mantell of Senior Helpers). Additionally, late in the course of litigation, Respondents disclosed that they have been acquired by a Michigan-based entity, WWWB Trustees, LLC.[8] **(R. pp. 251-252)** (Def. Resp. to Interrog.).

[8] The Michigan Office of Banking has confirmed that WWWB, LLC (also known as Waterway, Wilholt, Worfel & Bronsink, LLC) is prohibited from acting as fiduciary in Michigan.

The totality of the operations of these various entities— across corporate names, county, judge, and matter— is not likely cognizable by the probate court, or by the principals, wards, or the families to whom Respondents advertise their services. BOFI's licensure, regulation, and examination of these entities would ensure that Respondents' fiduciary operations are undertaken within accepted standards of safety, financial and organizational soundness, propriety and fidelity. Principals, wards, and their families are protected, and the probate court's work is substantially aided, rather than displaced or hindered, by BOFI's regulation of these entities.

The Court erred in finding that BOFI does not regulate entities serving in so-called "non-trustee" fiduciary roles and does not have regulatory authority over these non-trustee fiduciaries "[b]ecause these roles are codified in the Probate Code and are regulated by the probate courts." **(R. p. 10)** (Summary Judgment Order). BOFI respectfully requests this Court to reverse this finding.

IV. IN THE ALTERNATIVE, EVEN IF THE MASTER-IN-EQUITY IS CORRECT THAT TRUST BUSINESS MUST INVOLVE THE ADMINISTRATION OF A TRUST, THE MASTER-IN-EQUITY ERRED IN HOLDING THE FIDUCIARY ROLES HELD BY RESPONDENT DID NOT INVOLVE THE ADMINISTRATION OF A TRUST, AND THEREFORE CONSTITUTE UNLAWFUL TRUST BUSINESS.

Even if the Master-in-Equity correctly defined "trust business" to include only business activity involving a trust, Respondents' activity in serving as conservator, guardian, and personal representative, and agent, by definition, involve "the administration of trusts." **(R. p. 8)** (Summary Judgment Order). Therefore, by serving in these roles, Respondents have violated S.C. Code Ann. § 34-21-10, and must be enjoined as unauthorized trust business.

Black's Law Dictionary defines a trust as "An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or

ownership, recognized and enforced by courts of chancery." **(R. p. 8)** (Summary Judgment Order); see also https://thelawdictionary.org/trust/.

Under South Carolina law, a personal representative is a trustee: "a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." S.C. Code Ann. § 62-3-711(a). A conservator is also a trustee: "The appointment of a conservator vests in him title as trustee to all property of the protected person." S.C. Code Ann. § 62-5-417. Because Respondents admit to serving as personal representative and conservator and holding themselves out to the public as serving in these roles without BOFI's prior approval, they have conducted unauthorized trust business as a matter of law, even by the Master-in-Equity's narrow definition of trust business.

Likewise, in the absence of a conservator, a guardian is responsible for "receiving money and tangible property deliverable to the ward," just as a trustee would, "and applying the money and property for support, care, and education of the ward." S.C. Code Ann. § 62-5-309(A)(6)(b). And, like a trustee, an agent has broad power over another's assets, and may "do any lawful act with respect to the subject and all property related to the subject" (§ 62-8-203(10)), including demanding "money or another thing of value to which the principal is… entitled, and conserve, invest, disburse, or use anything so received," (§ 62-8-203(a)), and "contract[ing] in any manner with any person" (§ 62-8-203(2)). Even applying the Master-in-Equity's narrow definition of trust business, to the extent Respondents have held property "for the beneficiary by another person, in whom resides the legal title or ownership" while serving as guardian or agent, they have conducted unauthorized trust business. **(R. p. 8)** (Summary Judgment Order).

Therefore, in the alternative to BOFI's previous requests for reversal, BOFI asks this Court to partially reverse the Master-in-Equity and hold that Respondents have conducted unauthorized trust business as a matter of law by serving as conservator and personal representative, and to remand with instructions to the Master-in-Equity that, to the extent that they have held property in trust while serving as a guardian or agent, Respondents have also conducted unauthorized trust business with respect to those activities.

CONCLUSION

For the foregoing reasons, BOFI requests that this Court reverse the Master-in-Equity's granting of Respondents' Motion for Summary Judgment, declare that trust business requiring BOFI's prior approval includes the fiduciary roles of conservator, guardian, personal representative and agent, and declare that BOFI properly licenses and regulates non-exempt entities serving in these roles.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

CERTIFICATE OF SERVICE

This is to certify that today undersigned counsel for the served one (1) copy of the APPELLANT'S BRIEF by electronic mail delivery of same to the recipients listed, and at their Attorney Information System provided email addresses, via the attached E-mail:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2023-000017

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South Carolina Board of Financial Institutions ..... Appellant,

v.

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July 7, 2023

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STATEMENT OF ISSUES

South Carolina Code § 34-21-10 gives the South Carolina Board of Financial Institutions authority to regulate companies engaged in a "trust business." The circuit court held that this two-word statutory phrase meant "a business involved with the administration of trusts," and that it did not expand the Board's jurisdiction to regulating other types of fiduciaries, such as guardians and conservators, who are not administering trusts. (R. p. 4; Order at 5.) Did the circuit court err in its reading of the phrase "trust business"?

STATEMENT OF THE CASE

The South Carolina Probate Code contains a comprehensive set of laws for administering and protecting the "affairs of decedents, missing persons, protected persons, minors, and incapacitated persons." S.C. Code Ann. § 62-1-102(b)(1). The General Assembly also established a specialized court—the Probate Court—to exercise "exclusive original jurisdiction over all subject matter" related to issues governed by the Probate Code. *Id.* § 62-1-302(a).

Probate courts have broad powers to appoint fiduciaries to assist and protect those persons who fall within their jurisdiction, including, for example, "guardians," *id.* § 62-1-201(15); "conservators," *id.* § 62-1-201(6); and "personal representatives," *id.* § 62-1-201(33). But often, the people needing the protections afforded by the Probate Code do not have a family member or friend available with the resources, skills, or even willingness to serve in a court-appointed fiduciary capacity.

Respondents CDM Corporation, Inc., and Guardian Fiduciary Services, LLC, fill this critical gap. They provide a suite of fiduciary services to elderly, disabled, or otherwise compromised individuals of South Carolina: guardianship, conservatorship, personal representative, and power-of-attorney services. (R. p. 199; Mantell Aff. ¶ 4.) CDM and Guardian are often called when vulnerable individuals—including, for instance, a patient in a coma, a severely drug-addicted minor, or a mentally-ill person—have no one else to protect their interests. (R. p. 199; *id*. at ¶¶ 8–9.) Nearly all of CDM and Guardian's clients are referred by licensed South Carolina attorneys, and the companies are then formally appointed to serve by judges of the South Carolina Probate Court. (R. p. 199; *id*. at ¶ 5.)

Because of the critical role fiduciaries play under the Probate Code, South Carolina's probate judges routinely utilize companies like CDM and Guardian to serve as non-trustee

fiduciaries for "vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those persons whom have no relative or family member that is willing, capable or qualified to serve." (R. p. 209; Judge Carter Aff. ¶ 12.)

In addition to these fiduciary services provided to those within the Probate Court's exclusive original jurisdiction, CDM had also been appointed to serve as trustee for a handful of trusts. As part of its authority to supervise "banks and building and loan associations," S.C. Code Ann. § 34-1-60, the South Carolina Board of Financial Institutions has authority to regulate companies that operate as a "trust business," *id.* § 34-21-10. Through its history, CDM had been assured by the Board that these trustee appointments did not render CDM regulable as a "trust business" by the Board, as CDM was "not actively managing investments." (R. p. 199; Mantell Aff. ¶ 12.)

But at some point, and for reasons unknown, the Board changed its position on this issue and sought to regulate CDM (and Guardian, too) pursuant to the agency's authority over banks that operate a "trust business."

On October 26, 2020, the Board filed this action in circuit court in Georgetown County, in which it sought a declaration that CDM and Guardian's non-trustee fiduciary services rendered them an "unlawful trust business," along with an injunction prohibiting them from "serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust, as well as holding themselves out as providing these services." (R. pp. 15–23; Compl. ¶¶ 24–39.)

CDM and Guardian counterclaimed, seeking a declaratory judgment that the statutory term "trust business" means exactly that—that is, a "business" involved in the administration of "trusts"—and that their service in other non-trustee fiduciary roles did not constitute "trust business" subject to the Board's authority. (R. pp. 24–35; Ans. & Countercl. ¶¶ 25–37).

On consent motion by the parties, Judge Culbertson referred the case to Judge Crosby, the Georgetown County Master-in-Equity, for resolution. (R. p. 1; Consent Order of Reference). On August 22, 2022, the parties filed competing motions for summary judgment. (R. pp. 77–181; Defendants' Motion for Summary Judgment and Accompanying Exhibits; R. pp. 42–76; Board's Motion for Summary Judgment and Accompanying Exhibits.)

Judge Crosby decided the motions without a hearing, finding that the statute means precisely what CDM and Guardian argued. Judge Crosby held that the term "trust business" regulated by the Board must involve administration of a "trust," and that CDM and Guardian's service as guardian, conservator, personal representative, executor, or attorney-in-fact did not constitute a "trust business." (R. pp. 4–12; Summary Judgment Order at 4–7.) Judge Crosby also held that CDM's prior service as a trustee for a handful of trusts would have fallen within the Board's jurisdiction over a "trust business," and enjoined CDM from further service as a trustee without first following the statutory procedures for a "trust business." (R. p. 4; *id.* at 6.)[1]

The Board sought reconsideration of Judge Crosby's decision on November 14, 2022. (R. p. 261; Motion for Partial Reconsideration.) Judge Crosby denied that motion on December 20, 2022. (R. p. 13; Order Denying Plaintiff's Motion for Partial Reconsideration.) This appeal followed.

STANDARD OF REVIEW

This appeal involves a question of statutory interpretation, which is reviewed *de novo*. *Books-A-Million, Inc. v. S.C. DOR*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022).

[1] This part of Judge Crosby's summary judgment ruling has not been appealed and is not before the Court. CDM acknowledged during the proceedings below that it was divesting itself of the small handful of trusts for which it had been tapped to serve as trustee. (R. p. 199; Mantell Aff. ¶ 14.)

ARGUMENT

I. The circuit court correctly held that the statutory phrase "trust business" means a "business" involving a "trust," not other businesses that involve services unrelated to administering trusts.

This case begins and ends with the plain language of the statute limiting the Board's authority to regulate certain businesses. The South Carolina Banking Code provides that "[n]o corporation, partnership, or other person shall conduct a ***trust business*** in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board." S.C. Code Ann. § 34-21-10 (emphasis added).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey v. Hailey*, 404 S.C. 320, 324, 745 S.E.2d 81, 82 (2013). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and a court has no right to impose another meaning. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute").

This ironclad rule of law controls here. Judge Crosby held that the term "trust business" means exactly what the words say: "a business involved with the administration of trusts." (R. p. 4; Order at 5.) And because CDM no longer serves as a "trustee" for "trusts" (and Guardian never did), the Respondents are beyond the scope of the Board's limited authority to regulate a "trust business." The circuit court's ruling is unimpeachable based on the statute's own words, and it should be readily affirmed.

II. Every tool of construction reinforces the circuit court's reading of the statutory phrase "trust business."

The Court should not resort to anything beyond the statute's plain language unless it finds that there is something unclear about the words "trust business." *See City of Camden v. Brassell*,

326 S.C. 556, 560, 486 S.E.2d 492, 494–95 (Ct. App. 1997) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning."). But if the Court decides it should test the circuit court's holding against norms of statutory construction, every principle reinforces Judge Crosby's reading of the phrase "trust business."

Usual and Customary Meaning. The Board makes much of the fact that the phrase "trust business" is not defined by statute. (*E.g.*, Board's Br. at 11, 16.) The fact that the Legislature did not include a definition of a basic phrase does not somehow render it unclear.

Where the General Assembly does not define a statutory term, courts must interpret the term according to its "usual and customary meaning." *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994). Here, the "usual and customary" definition of a "trust business" is a business involved with the administration of trusts, just as Judge Crosby held below; this is hornbook law. *See, e.g.*, 9 C.J.S. *Banks and Banking* § 650 ("It has been said that the primary and ordinary conception of a ***trust company*** is a corporation or institution organized to ***take and administer trusts***, rather than carry on the ordinary functions of banking.") (emphasis added).

This understanding is even confirmed by the Board's own citations. For instance, on Page 17 of its brief, the Board cites a 1996 Attorney General's opinion as suggesting that "trust business" means something beyond a business that administers trusts. Not so.

That opinion—authored by the current South Carolina Solicitor General—concludes that a "trust business" means "taking, accepting, administering and executing ***trusts***," not simply taking on any fiduciary responsibility. (R. p. 219; 1996 S.C. AG LEXIS 25, at *7 (Feb. 9, 1996) (emphasis added).) That opinion surveyed courts nationally that have reached this exact same understanding. *See id.* at *4–5 (citing *Carney v. Sam Houston Underwriters*, 272 S.W.2d 942, 946 (Tex. Civ. App.

1954), for the proposition that "the ordinary conception of a ***trust company*** as being one authorized to ***take and administer trusts***") (emphasis added); *id.* at *5 ("In *Goss and Hamlyn Howe v. State*, 285 P.2d 428, 431 (Okla. 1955), the Court cited Webster's *New International Dictionary* (2d ed. Unabridged) defining a ***'trust company'*** as 'any corporation found for the purpose of acting as ***trustee***.'") (emphasis added). Accordingly, the Board's own authorities confirm that the customary understanding of the phrase "trust business" is precisely as Judge Crosby held below.

Cannot Add to a Statute. The statutory phrase controlling this case is "trust business." It is a simple two-word phrase that, as noted above, traditionally means being in the business of administering trusts. In opposing this straightforward understanding of the term, the Board argues that the Court should construe it expansively: "'trust business' refers to the undertaking of a broad range of fiduciary activities, including trustee, as well as other fiduciary roles such as personal representative, guardian, conservator, and agent pursuant to a power of attorney." (Board's Br. at 12; *see also id.* at 17 (arguing that "trust business" means not only "trustee," but also "conservator, guardian, personal representative, and agent").) In short, the Board urges the Court to read the word "trust" to mean "trustee ***and*** personal representative ***and*** guardian ***and*** conservator ***and*** agent pursuant to a power of attorney ***and*** other fiduciary roles."

Respectfully, a court has no authority to add to or alter the plain language of a statute. *See, e.g.*, *Ballard v. Newberry County*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021) ("We are not at liberty to add to the statutory law or subtract from it."). The General Assembly did not vest the Board with jurisdiction to govern "personal representatives" and "guardians" and "conservators" and "agents pursuant to a power of attorney" and "other fiduciary roles." Instead, it gave the Board limited authority to regulate companies who administer "trusts," and Judge Crosby rightly held that the statute means nothing more than what the Legislature actually said.

Inclusion of "Trusts" Means Exclusion of Other Types of Fiduciaries. As a corollary, if the General Assembly had intended to give the Board broad authority to regulate any entity that provides any possible fiduciary services, it certainly could have said so. In fact, it has legislated heavily regarding other types of fiduciaries throughout the State Code. *See, e.g.*, S.C. Code Ann. §§ 62-5-201 to -310, *id.* §§ 62-5-701 to -716 (addressing guardians); *id.* §§ 62-5-401 to –431 (addressing conservators); *id.* §§ 62-5-501 to –518 (addressing agents acting through a healthcare power of attorney).

But the General Assembly did not identify any type of fiduciary beyond "trusts" when shaping the scope of the Board's authority. When a statute specifically includes one item, courts construe the law to necessarily exclude all other items that the legislature did not include. *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed. 1999))).

This understanding is reinforced by the very next section of the State Banking Code. While Section 34-21-10 directs companies engaged in a "trust business" to register with the Board, Section 34-21-20 authorizes the Board to examine and regulate "trust companies, and fiduciary corporations authorized to conduct trust business." Through Section 34-21-20, the General Assembly explicitly recognized that there are "fiduciary corporations" who are not engaged in "trust business," and it did not include them within the scope of the Board's authority.

And this understanding is reinforced by the Probate Code as well, where the Legislature specifically distinguished among the various types of fiduciaries. *See* S.C. Code Ann. § 62-1-201(49) (defining "trust" for purposes of the Probate Code and providing that the term "excludes"

certain categories of fiduciary, including *inter alia* conservatorships, personal representatives, certain custodial arrangements, "and any arrangement under which a person is nominee or escrowee for another").

In short, if the Legislature intended for the Board to regulate fiduciaries who are not administering trusts, it could have, and would have, expressly delegated that power. In fact, Pages 19 and 20 of the Board's brief list several states where other legislatures passed laws that give bank regulators authority far beyond regulating only "trusts." But the South Carolina General Assembly did not, and—as a matter of law—it expressly excluded fiduciary companies and other non-fiduciary roles from the scope of the Board's authority under Section 34-21-10.

Agencies are Limited as Creatures of Statute. Further confirming Judge Crosby's plain-language reading of the phrase "trust business" is the fact that this statute is a limitation on a state agency's authority. Because the Board is created by the General Assembly, it only has the powers the Legislature gives to it. *See, e.g.*, *Med. Soc'y v. MUSC*, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999) (holding that the MUSC Board of Trustees did not have "the power to dispose of real or personal property" because "[a]n agency created by statute has only the authority granted it by the legislature," and there was no such authority expressly stated in the State Code). Accordingly, courts "are bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003).

This principle applies with full force here. The Board was created to "supervise all ***banks and building and loan associations*** and provide regulations and instructions for the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof, as may be necessary or proper to effectuate the purposes of this Title." S.C. Code Ann.

§ 34-1-60 (emphasis added). CDM and Guardian are certainly not "banks" or "building and loan associations." If the Board's authority is truly intended to reach beyond these types of businesses, and if the Board is truly supposed to have the wide jurisdiction that it claims in this case, then the General Assembly—not the Board, and not the Judiciary—must be the one to make that clear.

In support of its overreaching position, the Board dedicates an entire section of its opening brief—Section II—to arguing that courts are required to defer to an agency's "interpretation" of a statute. That vastly overstates the law. Deference may be given when a statute is silent, but not when, as here, the agency's position is squarely contrary to the statute's plain language. *See, e.g.*, *Jack's Custom Cycles, Inc. v. S.C. DOR*, Op. No. 5970 (S.C. Ct. App. Apr. 26, 2023) (Howard Adv.Sh. No. 16, at 33) ("While this court typically defers to the agency's interpretation of an applicable statute, we will reject its interpretation where the plain language of the statute is contrary to the agency's interpretation.").

In a recent concurring opinion, Justice Kittredge gave a stern warning against blindly accepting the type of jurisdiction-expanding argument the Board presents here: "In South Carolina, to preserve some semblance of the separation of powers we once held sacred, an administrative agency may not make law without legislative oversight and approval." *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). He further observed: "'[S]urely one thing no agency can do is apply the wrong law to citizens who come before it, especially when the right law would appear to support the citizen and not the agency. . . . An agency decision . . . that loses track of its own controlling regulations and applies the wrong rules in order to penalize private citizens can never stand." *Id*. at 461, 790 S.E.2d at 776 (quoting *Caring Hearts Pers. Home Servs., Inc. v. Burwell,* 824 F.3d 968, 977 (10th Cir. 2016)) (cleaned up).

Justice Kittredge's scolding of "the so-called Fourth Branch of government," *id.* at 465, 790 S.E.2d at 778, is especially relevant in this case, as the Board issued "written guidance" ***during litigation before the circuit court*** on which it now relies as some type of legal authority that binds this Court. (R. p. 100; Board's "Policy Statement," cited on Pages 21–23 of the Board's Brief.) This is remarkable overreach by the agency.

If the Board intends for its self-serving, mid-litigation "Policy Statement" to have the force of law, then it must attempt to promulgate that "Policy Statement" as a regulation in compliance with the South Carolina Administrative Procedures Act. *See Joseph*, 417 S.C. at 453, 790 S.E.2d at 772 ("[W]e hold that the Board's adoption of the 2011 Position Statement violates the requirements of the APA.").[2] Otherwise, the "Policy Statement" carries no more weight than any other extra-judicial writing by any other litigant in any other case.

Worse yet, the "Policy Statement" adds nothing but confusion to the issue. In it, the Board opines that the term "trust business" extends to several non-trustee roles, but then it adds:

> In addition to these explicitly defined fiduciary roles, the Board acknowledges that there exists a broad range of fiduciary activities which might constitute conducting trust business. This guidance does not constitute a comprehensive list of activities which constitute trust business. The Board strongly advises entities to contact the Office of the Commission of Banking with questions regarding whether specific activities constitute conducting trust business.

[2] Even then, the "Policy Statement" would fail as a matter of law, as an agency cannot use the rulemaking process to alter—or, as here, expand—its statutory authority. *See, e.g.*, *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 499, 685 S.E.2d 600, 608–09 (2009) (striking a regulation of the State Ethics Commission to the extent it was more restrictive than the statutes that governed what agency materials could be made public); *Soc'y of Prof'l Journalists v. Sexton*, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (striking as "invalid and repugnant to FOIA" a DHEC regulation that attempted to limit the class of persons who could obtain a death certificate and reiterating that "[a]mending FOIA to restrict the class of persons to whom DHEC must furnish death certificates is a legislative function," not something that can be done by an agency itself).

(R. p. 100; Board "Policy Statement," at 2.) The agency's "we'll know it when we see it, and you'll know it when we tell you" approach would be entirely unworkable and underscores why Judge Crosby's straightforward reading of the phrase "trust business"—"a business involved with the administration of trusts"—is correct. (R. p. 4; Order at 5.) Accordingly, the Court should reject the agency's arguments and affirm the circuit court's opinion.

III. Companies performing fiduciary tasks unrelated to administering trusts are regulated by both the Probate Court and the common law.

An overarching theme of the Board's argument is that someone, somewhere must be able to monitor how fiduciaries conduct themselves. Even though the Board is tasked with regulating banking and has no skills, expertise, or jurisdiction with respect to, say, protecting patients in comas, drug-addicted minors, or mentally-ill persons—who are among CDM and Guardian's clients (R. p. 199; Mantell Aff. ¶¶ 8–9)—the agency urges the Court to deem it the clearinghouse for any entity that provides any type of fiduciary services in South Carolina. (Board Br. at 23–29.)[3] And it supports this request by using ominous rhetoric, such as pointing out that Mr. Mantell "utiliz[es] the names and corporate veils of both CDM Corporation and Guardian Fiduciary Services" when accepting fiduciary appointments from the Probate Court. (*Id.* at 28.)[4]

[3] The fact that CDM and Guardian provide fiduciary services such as these when called upon by South Carolina lawyers and the Probate Court highlights a core flaw in the Board's argument to this Court. The Board devotes huge portions of its opening brief to discussing its belief that various state and national banking laws support its arguments here. (*E.g.*, Board's Br. at 13–20.) But those banking laws are fundamentally irrelevant to the fiduciary services that are in dispute, and the total mismatch between the Board's argument and the fiduciary roles played by CDM and Guardian underscores the correctness of Judge Crosby's plain-language reading of the phrase "trust business."

[4] As Mr. Mantell explained in his affidavit, he uses the corporate form to obtain insurance coverage, not for some nefarious reason, as implied by the Board's appellate argument: "Operating through my company, instead of individually, allows me to obtain insurance. This insurance benefits me personally, but also benefits my clients." (R. p. 199; Mantell Aff. ¶ 7.)

The Court should not credit the Board's portrayal of this as a lawless situation that demands an agency's urgent involvement. For one, the Board does not allege that CDM or Guardian have done anything inconsistent with any standard or expectation of a fiduciary in any respect. Instead, the source of this litigation appears to be little more than CDM and Guardian's failure to pay a $15,000 application fee and annual $19,600 "supervisory fee" to the Board, and their refusal to voluntarily subject themselves to the Board's jurisdiction. (R. p. 209; Judge Carter Aff. ¶ 14.)

But more fundamentally, it is not credible to suggest that CDM, Guardian, or anyone else performing fiduciary services unrelated to trusts can simply slip through the cracks. When the Probate Court appoints CDM, Guardian, or anyone else to serve as a guardian, or a conservator, or a personal representative, it retains jurisdiction over that appointee and has full authority to monitor and penalize the appointee should it breach its fiduciary responsibilities. *See* S.C. Code Ann. § 62-1-112 ("The inherent power of the court to impose penalties for contempt extends to all filing requirements, proceedings, judgments, and orders of the court.").[5]

And the Probate Court does not simply appoint fiduciaries blindly. The General Assembly has created criteria to govern the appointment process, as well as to direct and monitor the actual functions of each category of fiduciary, including *inter alia* guardians, S.C. Code Ann. §§ 62-5-201 to -310, *id.* §§ 62-5-701 to -716; conservators, *id.* §§ 62-5-401 to –431; and agents acting through healthcare powers of attorney, *id.* §§ 62-5-501 to –518.

None of these statutes require a commercial entity to be certified as a "trust business" under the Banking Code before the Probate Court can appoint it to serve in a fiduciary role unrelated to

[5] Judge Carter's affidavit provides first-hand insight into how the Probate Court "operates to effectively oversee the and regulate the appointment and responsibilities of guardians, conservators, attorneys-in-fact, and personal representatives." (R. p. 209; Judge Carter Aff. ¶ 20.)

a trust. But once it is appointed, the fiduciary subjects itself to the ongoing authority of the Probate Court to supervise its work.

Not only does the Probate Court have inherent authority over the fiduciaries it appoints, the common law recognizes a private cause of action for breaching a fiduciary duty. *See generally Bennett v. Estate of King*, 436 S.C. 614, 626–27, 875 S.E.2d 46, 52–53 (2022) (analyzing a claim for breach of fiduciary duty that arose in the context of a personal representative's conduct after being appointed by the Probate Court, and listing numerous cases where a breach had been affirmed).

Accordingly, the Board's dire forecast of unchecked rogue behavior by fiduciaries in the event the Court does not reverse Judge Crosby's plain-language reading of the phrase "trust business" is unfounded. South Carolina law has redundancies built in to ensure faithful and prudent conduct by non-trustee fiduciaries and to impose consequences by the Probate Court and injured plaintiffs if fiduciaries breach their responsibilities.

If the Board believes that it, too, should be allowed to regulate and supervise the conduct of fiduciaries who are not administering trusts, it should so persuade the General Assembly, not this Court. Thus far, the Legislature has not given that broad jurisdiction to the Board, and Judge Crosby's ruling on this point should be affirmed.

IV. The Board's alternative argument is not preserved and is incorrect as a matter of law.

The Board concludes its opening brief with a brand new argument: that each of the fiduciary roles that CDM and Guardian perform under direction of the Probate Court essentially amount to being a "trustee," and that this Court should declare that CDM and Guardian are therefore in a "trust business." (Board Br. at 29–31.) This is the first time the Board has made such an argument in this case, and it is therefore improper and should not be considered. *See, e.g.*,

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").[6]

But even if the Court takes up this argument, the Board's position fails. The Board's argument essentially suggests that any type of fiduciary is, in a sense, a "trustee" because it is operating for the benefit of another. But this is a generic gloss on a specific statutory term.

A "trust business" involves administering a "trust," just as Judge Crosby held. And CDM and Guardian's various fiduciary roles created and governed by the Probate Code are specifically distinct from "trusts." *See* S.C. Code Ann. § 62-1-201(49) (defining "trust" for purposes of the Probate Code and providing that the term "excludes" certain categories of fiduciary, including *inter alia* conservatorships, personal representatives, certain custodial arrangements, "and any arrangement under which a person is nominee or escrowee for another").

Accordingly, the Board's argument that serving as a conservator, a personal representative, or other non-trustee fiduciary roles is effectively the same as administering a trust fails as a matter of law. The Court should reject this unpreserved argument as a result.

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[6] The Board did not raise this specific argument below. It did, however, suggest in passing in its summary judgment briefing that there is no "relevant legal distinction" among various fiduciary roles. (R. p. 77, Board's Mot. for Summ. J. at 9.) To the extent the Court views this as similar enough to the new argument raised in the Board's appellate brief to potentially clear the "raised below" hurdle of the preservation analysis, the argument is still not preserved for appellate review because Judge Crosby never ruled on it, nor was it included in the Board's Rule 59 motion. *See, e.g.*, *Summersell v. S.C. Dep't of Pub. Safety*, 337 S.C. 19, 22, 522 S.E.2d 144, 145–46 (1999) ("[W]here an issue presented to the circuit court in a civil case is not explicitly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review.").

CONCLUSION

Just as every square is a rectangle, but not every rectangle is a square, every trustee is a fiduciary, but not every fiduciary is a trustee. The Board's broad construction of the phrase "trust business" to include every conceivable type of fiduciary, irrespective of whether a "trust" is actually involved, is inconsistent with the plain language of South Carolina Code § 34-21-10, is inconsistent with the Board's fundamental purpose of regulating banks, and is inconsistent with every applicable norm of statutory construction. The Court should affirm the circuit court's ruling accordingly.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certify that this Brief complies with Rule 211(b), SCACR.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

REPLY

July 7, 2023

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ARGUMENT

I. THE MASTER-IN-EQUITY'S RULING CONTRADICTS SOUTH CAROLINA LAW, AND THE EFFECT OF UPHOLDING THIS RULING WOULD BE FAR-REACHING AND INDUSTRY-CHANGING.

The question before the Court in this case is simple: what did the General Assembly mean when it prohibited entities from conducting "trust business" without BOFI's prior approval?

BOFI asserts that "trust business," which it is statutorily obligated to license and regulate, includes serving in the fiduciary roles of trustee, conservator, guardian, personal representative, and agent. This interpretation gives meaning to the plain language of S.C. Code Ann. § 34-21-10, which prohibits any entity from conducting trust business in this state without BOFI's approval, and exempts *only individuals and national banks* from obtaining BOFI's approval to qualify and act as "trustee, executor, administrator, guardian, committee or in any other fiduciary capacity."

The Master-in-Equity, however, held that an entity needs BOFI's prior approval to conduct "trust business" only when it is "involved with the administration of trusts." **(R. p. 8)** (Summary Judgment Order). The Master-in-Equity further held that BOFI lacks authority to regulate any entity serving in "non-trustee fiduciary roles including conservator, guardian, attorney-in-fact in accordance with a power attorney, personal representative, or executor." Id.

This ruling, if upheld, will allow **any entity**—whether a bank, local LLC, or foreign corporation— to seek and potentially obtain complete financial control over the estates and assets of the most vulnerable citizens of this State without meeting any licensure requirements and without any examination or regulatory oversight.

The Master-in-Equity's holding is unjustifiable. Without explanation, it eviscerates any meaning from the final phrase of Section 34-21-10 as well as numerous other sections, ignores case law, refuses to give BOFI's interpretation deference, and declines to consider voluminous

evidence proving that the usual and customary meaning of "trust business" includes conservator, guardian, personal representative, and agent.

BOFI asks that this Court reverse the Master-in-Equity and find that Respondents have conducted unlawful trust business in violation of Section 34-21-10 by serving as conservator, guardian, personal representative, and agent, without obtaining BOFI's written approval to do so.

II. THE MASTER-IN-EQUITY'S NARROW INTERPRETATION OF "TRUST BUSINESS," AND OF BOFI'S AUTHORITY TO REGULATE IT, CANNOT BE RECONCILED WITH THE PLAIN LANGUAGE OF TITLE 34.

Nearly every statute in Title 34 addressing "trust business," "trust company," "trust institution" or banks with "trust powers" explicitly discusses serving as conservator, guardian, personal representative, and/or agent. See e.g., S.C. Code Ann. § 34-21-10; § 34-210(2), (4), and (7); § 34-21-220; §§ 34-15-10 and 20; § 34-3-830; § 34-3-850; § 34-1-180(9). Neither the Master-in-Equity nor Respondents offer any explanation as to why the General Assembly would repeatedly list these supposedly irrelevant fiduciary roles in statutes concerning trust business. The Master-in-Equity's narrow interpretation of "trust business," and of BOFI's authority to regulate it, cannot be reconciled with the plain language of these statutes. There is only one explanation for the General Assembly naming these fiduciary roles in connection with trust business: serving in any of these roles constitutes "trust business" subject to BOFI's approval and oversight. Thus, Master-in-Equity's definition of trust business must be reversed.

III. THE USUAL AND CUSTOMARY MEANING OF "TRUST BUSINESS" INCLUDES SERVING AS CONSERVATOR, GUARDIAN, PERSONAL REPRESENTATIVE, AND AGENT.

The Master-in-Equity's interpretation of the term "trust" discussed in Title 34 ignores the usual and customary definition of "trust" in the context of "trust business," which includes a broad range of fiduciary activities.

As Corpus Juris Secundum confirms, the usual and customary meaning of "trust" refers broadly to various fiduciary roles:

> A trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word "trust" also is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts.

90 C.J.S. *Trusts* § 1 (Trust, defined). Courts have acknowledged and applied a similarly broad definition of "trust" specifically in the context of trust business.[1]

The Master-in-Equity fails to acknowledge the context of the word "trust," as used in "trust business." The Master erroneously applies the Probate Code's definition of "trust" to define trust business, even though that definition applies only "in this Code," (i.e. the Probate Code), and only "unless the context otherwise requires." S.C. Code Ann. § 62-1-201. The Probate Code does not purport to define trust business, nor does it discuss the licensure or regulation of entities conducting trust business. The Probate Code's definition of "trust" was clearly never intended to be used to define trust business.

The Master-in-Equity also cites a definition of "trust" from thelawdictionary.org to narrowly define "trust business," while ignoring the more applicable entry in that same resource:

> TRUST COMPANY - Business that works solely in fiduciary relationships with organizations and individuals and acts as guardian, executor, trustee in the administration of all custodial arrangements, trust funds and estates.

[1] A trust company chartered "To accept and execute all such trusts of every description as may be committed to them," could lawfully serve as conservator because "the powers thus conferred are broad enough to cover a trust of this character." Glaser v. Priest, 29 Mo. App. 1, 9 (1888). A trust company, "by virtue of its general powers… to 'execute trusts of every description,' must be presumed to have corporate capacity to act as committee of the lunatic [i.e. guardian/conservator]." Equitable Tr. Co. v. Garis, 190 Pa. 544, 549, 42 A. 1022, 1023 (1899). "The enumeration of the forms of transactions which may be regarded as germane to the purposes of the modern trust company is by no means a simple task…" and includes a "variety of transactions… as a matter of common knowledge..." State v. Cent. Tr. Co., 106 Md. 268, 67 A. 267, 270 (1907).

https://thelawdictionary.org/?s="trust+company".

Likewise, the Master-in-Equity and Respondents quote an entry called "Distinction between bank and trust company," in Corpus Juris Secundum to define trust company as "a corporation or institution organized to take and administer trusts." 9 C.J.S. *Banks and Banking* § 650. This entry does not purport to define "trust company," nor does Corpus Juris Secundum ever define "trust company." It does, however, define "trust," noting in the very first sentence that the word "is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts." 90 C.J.S. *Trusts* § 1.

Respondents also selectively quote an Attorney General's opinion defining "trust company" as "any corporation found for the purposes of acting as trustee," but ignore *the next sentence* further defining "trust company" as "a corporation formed for the purposes of… acting as testamentary trustee, executor, guardian, etc." **(R. p. 220)** Op. S.C. Att'y Gen (Feb. 9, 1996).

BOFI asks this Court to apply the correct usual and customary meaning of "trust" in "trust business," as used in S.C. Code Ann. § 34-21-10, and find that Respondents have unlawfully served as conservator, guardian, personal representative, and agent without BOFI's prior approval.

IV. BOFI IS EMPOWERED BY STATUTE TO REGULATE ENTITIES SERVING IN FIDUCIARY ROLES.

Respondents incorrectly assert that BOFI's authority is limited to regulating only "banks and building and loan associations." S.C. Code Ann. § 34-1-60. S.C. Code Ann. § 34-21-20 provides BOFI with the authority to regulate, and examine Respondents:

> All state chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by the State Board of Financial Institutions and are further subject to rules and regulations promulgated by the Board.

Respondents acknowledge Section 34-21-20, but only to argue that its reference to "fiduciary corporations authorized to conduct a trust business" somehow proves that corporations may serve in any fiduciary role in South Carolina, other than trustee, without BOFI approval.

This is simply not so. "Fiduciary corporation" is merely a catch-all term at the end of a list of entities which may potentially be authorized to conduct trust business. Discussing an earlier version of this very statute, Supreme Court has acknowledged that this law undertakes to "subject corporate fiduciaries to examination." Ex parte Michie, 167 S.C. 1, 1,165 S.E. 359, 367 (1932).

Since Respondents have conducted trust business by serving as conservator, guardian, personal representative, and agent, they are subject to BOFI's regulation and examination.

V. BOFI'S INTERPRETATION OF "TRUST BUSINESS," AS USED IN S.C. CODE ANN. § 34-21-10, IS WORTHY OF DEFERENCE AS IT IS SUPPORTED LEGALLY, HISTORICALLY, AND IS CONSISTENT WITH EVERY OTHER STATE AND FEDERAL REGULATOR.

To the extent this Court finds S.C. Code Ann. 34-21-10 ambiguous, BOFI's interpretation should be applied. BOFI's Policy Statement articulates BOFI's good faith interpretation of the law, and is supported by a myriad of statutory, historical, and regulatory resources from South Carolina, other states, and the federal level. **(R. pp. 101-102)** (BOFI Policy Statement).

Respondents refer to a concurring opinion by Justice Kittredge which states that "an administrative agency may not make law without legislative oversight and approval." Joseph v. S.C. LLR, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). Regardless of the non-precedential nature of this quote, BOFI is in full agreement with its sentiment.

BOFI has never claimed to "make law;" however, an agency must interpret the laws it is obligated to enforce. S.C. Code Ann. § 1-23-10(4) indicates that State agencies have the authority to issue "policy or guidance… other than in a regulation," with the caveat that such guidance does not have the force or effect of law. Guidance setting forth an agency's interpretation of statute is

generally afforded deference. "[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts ... will defer to the agency's interpretation absent compelling reasons...." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

BOFI's Policy Statement was appropriately issued as it is the agency charged with administering the provisions of Title 34. BOFI did indeed issue its Policy Statement during this litigation. The purpose of this guidance was to provide a clearly articulated statement to the public as well as to the Master-in-Equity, regarding the Board's interpretation of Section 34-21-10. Candidly, before this case, BOFI was unaware of any dispute as to the meaning of "trust business." Once aware of the issue, the Board spoke by unanimous vote in a duly called meeting to issue this guidance.

The timing of the Policy Statement notwithstanding, BOFI[2] has regulated entities serving as conservator, guardian, personal representative, and agent in South Carolina for over 100 years. In 1932, the Supreme Court noted that statutes now codified at Sections 34-21-20 through 70 "undertake to… subject corporate fiduciaries to examination," recalling the following history:

> The lawmakers, when they granted them power to become **executors, administrators, guardians, and trustees,** must have realized that they were creating for them a different status in the law than that of an individual executor, but had faith in their fidelity and the security of the funds intrusted [*sic*] to them. The epidemic of bank failures which followed in the years preceding 1930 showed them the fallacy of their faith and induced the passage of the act of 1930, which accurately **defines the duties of such fiduciaries in the handling of trust funds.**

Ex parte Michie, 167 S.C. 1, 165 S.E. 359, 367 (1932). Moreover, there is significant evidence in the record showing that the Policy Statement represents BOFI's longstanding position and

[2] Including its predecessors, the Board of Bank Control, the State Bank Examiner, etc.

interpretation of its duties to approve and regulate entities serving as conservator, guardian, personal representative, and agent. See **(R. p. 52)** (Green Aff., ¶6), **(R. p. 57)** (J. Earle Financial Consent Order); **(R. pp. 107-109)** (CSBS Cooperative Agreement, Section 1.1). There are also ample resources corroborating BOFI's Policy Statement as a matter of regulatory understanding of "trust business." See **(R. pp. 120-159)** (Trust Business Definitions By State), **(R. pp. 253-260)** (OCC Interpretive Letter #1176), **(R. p. 48)** (Hinds Aff., ¶4-5).

In light of these considerations, the definition of "trust business," set forth in BOFI's Policy Statement is worthy of deference. If the law is silent or ambiguous as to the meaning of "trust business," BOFI's interpretation should be applied, and the Master-in-Equity should be reversed.

VI. BOFI'S ALTERNATIVE ARGUMENT, SET FORTH IN SECTION IV OF ITS BRIEF, WAS PRESERVED FOR THIS APPEAL.

The question of what fiduciary roles constitute "trust business" is at the center of this litigation, and has been thoroughly preserved, as evidenced by trial court briefs and orders.

Respondents object to the attempted application of their own definition of trust business to the facts of this case, contending that BOFI failed to preserve the question of whether each of Respondents' fiduciary activities involve "the administration of trusts" constituting unauthorized "trust business" according to the Master-in-Equity's erroneous definition. **(R. p. 8)** (Summary Judgment Order).

Even to the extent that this issue is somehow distinct and requires more specific preservation, it has been preserved. BOFI raised the issue in its Summary Judgment Motion, describing each fiduciary role, comparing it to a trustee, and noting that, in some cases, the Probate Code explicitly names these roles "trustee." **(R. pp. 82-86).** The argument concludes (as Respondents acknowledge) "there is no relevant legal distinction between the duties of trustee, conservator, guardian, personal representative, or agent pursuant to a power of attorney." **(R. p.**

85). The Master-in-Equity ruled on this issue, stating "The Probate Code's explicit exclusion of these non-trustee fiduciary roles the definition of trust, confirms that these activities are not included in the definition of the term 'trust business' as contemplated by Section 34-21-10." **(R. p. 10)** (Summary Judgment Order).

Thus, the issue has been preserved and this Court has jurisdiction to hold that Respondents, even by their own narrow definition of "trust business," have conducted unauthorized trust business as a matter of law by serving as conservator, guardian, personal representative, and agent.

CONCLUSION

For the foregoing reasons, BOFI requests that this Court reverse the Master-in-Equity's granting of Respondents' Motion for Summary Judgment, declare that trust business requiring BOFI's prior approval includes the fiduciary roles of conservator, guardian, personal representative and agent, and declare that BOFI properly licenses and regulates non-exempt entities serving in these roles.

s/ Shawn D. Eubanks
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

CERTIFICATE OF SERVICE

This is to certify that today undersigned counsel for the served one (1) copy of the REPLY OF APPELLANT by electronic mail delivery of same to the recipients listed, and at their Attorney Information System provided email addresses, via the attached E-mail:

Todd Carroll, Esq. (Todd.Carroll@wbd-us.com)
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July 7, 2023

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Board of Financial Institutions,
Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Respondents.

Appellate Case No. 2023-000017

Appeal From Georgetown County
Joe M. Crosby, Master-in-Equity

Unpublished Opinion No. 2025-UP-169
Heard February 12, 2025 – Filed May 28, 2025

REVERSED AND REMANDED

William J. Condon, Jr., of West Columbia, and Shawn David Eubanks, of Columbia, for Appellant.

James Dunbar Myrick, of Charleston, and Matthew Todd Carroll, of Columbia, both of Womble Bond Dickinson (US) LLP, and Molly McKenna McDermid, of Charleston, for Respondents.

Attorney General Alan McCrory Wilson, Solicitor General Robert D. Cook, Deputy Solicitor General J. Emory Smith, Jr., and Assistant Deputy Solicitor General Thomas Tyler Hydrick, all for Amicus Curiae South Carolina Attorney General.

PER CURIAM: Appellant, the State Board of Financial Institutions (BOFI), seeks review of an order of the Master-in-Equity concluding that Respondents, CDM Corporation, Inc. (CDM) and Guardian Fiduciary Services, LLC (Guardian), were not required to seek BOFI's approval pursuant to section 34-21-10 of the South Carolina Code (2020) before providing services as a personal representative of an estate, a conservator, a guardian, or an agent pursuant to a power of attorney because these services do not fall within the undefined term "trust business" for purposes of section 34-21-10.[1] BOFI argues that the legislature intended to include all fiduciary services within the meaning of a trust business. BOFI also challenges the master's conclusion that the probate court's authority over personal representatives, conservators, guardians, and agents automatically preempts BOFI's regulatory authority over them. BOFI contends that its regulatory authority and the jurisdiction of the probate court can coexist. We reverse and remand.

FACTS/PROCEDURAL HISTORY

Respondents are two small businesses created by their principal, Stephen Mantell, "for the purpose of providing needed [fiduciary] services for elderly, disabled, and otherwise compromised individuals in South Carolina." Most of Respondents' clients are referrals from South Carolina attorneys who are unable to pay the large fees of some trust companies. Mantell claims that not only these attorneys but also South Carolina probate judges have worked with him "for years and trust [him] in" the positions of guardian, conservator, personal representative, and agent pursuant to a power of attorney. Although Mantell would be exempt from the requirement in section 34-21-10 to obtain BOFI's approval if he were acting as an individual, he states, "Operating through my company, instead of individually,

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[1] Section 34-21-10 states, in part, "No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to [BOFI] and receiving written approval from [BOFI]." Section 34-21-10 exempts individuals from this requirement.

allows me to obtain insurance," which he claims benefits not only himself but also his clients.

On June 29, 2020, BOFI received a complaint that Respondents "appeared to be conducting [a] trust business without prior written approval of [BOFI], as required by S.C. Code Ann. § 34-21-10." BOFI's then-Commissioner of Banking, Richards Green, observed that Respondents' "website advertised the following services: 'Trusteeship,' 'Power of Attorney,' 'Personal Representative,' 'Guardianship' (including a representation that [Respondents were] 'a certified professional guardian agency'), and 'Conservator.'" Commissioner Green sent a letter to Respondents advising them that they were conducting an unlawful trust business and requesting information.[2] Respondents sent some information to BOFI, but Commissioner Green advised Respondents that the information was incomplete. Commissioner Green also advised Respondents that upon his review of the information they sent, it appeared that they were conducting an unlawful trust business.

Subsequently, BOFI received a second complaint concerning Respondents' businesses. Although BOFI gave Respondents "several extensions of time to respond," Respondents failed to provide the requested information. Ultimately, BOFI authorized Commissioner Green to send a "cease and desist" letter to Respondents and to "take legal action," if necessary.

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[2] In his letter, Commissioner Green stated that he had learned of CDM's services for the Patricia A. Fearson Revocable Trust. Commissioner Green requested the following additional information:

> 1. A written response to our concern that CDM and Guardian has or is conducting trust business in South Carolina without [BOFI] approval, including the facts and reasoning of why each company has not sought such approval from [BOFI]. Please also provide any supporting materials.
>
> 2. A written list of other trusts, estates, and other persons for whom CDM, Guardian, or any related company provides or has provided trust business in South Carolina since January 1, 2016.

On October 26, 2020, BOFI filed this action seeking a declaratory judgment and a permanent injunction against Respondents conducting trust business activities without BOFI's prior approval. In their Answer and Counterclaim, Respondents stated that as of that date, they had "either extricated themselves from all matters involving a trust, or ha[d] taken affirmative steps to extricate themselves from matters involving a trust." Respondents also stated that when "appointed to various roles, the companies are generally appointed by and through their principal, Stephen Mantell," and they denied that the "services they [then-]currently perform[ed] constitute[d] 'trust business services.'"

Additionally, Respondents claimed that they had previously contacted BOFI and were "told by BOFI that approval was not required for their businesses" because they "would not be managing investments on behalf of trusts."[3] Respondents asserted a counterclaim seeking a declaratory judgment that their businesses do not constitute trust businesses, are lawful, and are not subject to regulation by BOFI.

After the case was referred to the master, but before the parties filed cross-motions for summary judgment, BOFI unanimously adopted a policy statement "affirm[ing] BOFI's longstanding industry and regulatory interpretation of the phrase 'trust business' as used in S.C. Code Ann. § 34-21-10." The policy statement asserted that BOFI interprets the phrase "conduct a trust business" as used in section 34-21-10 to include serving as a personal representative of a decedent's estate, a guardian, a conservator, or an agent pursuant to a power of attorney.

The master did not conduct a hearing but issued a written order on November 3, 2022, granting partial summary judgment to BOFI as to Respondents' services as a trustee and enjoining Respondents from advertising for or providing these services. As to Respondents' other fiduciary services, the master granted Respondents'

[3] The Affidavit of Stephen P. Mantell, Respondents' principal, states, in part:

> I had two telephone conversations with Banking Commissioner Louie Jacobs in 2011. We discussed the various services provided by my companies in detail, including conservatorships, powers of attorney, acting as a personal representative, and trusteeships. [Commissioner] Jacobs informed me that, because my companies were not actively managing investments, we were not in violation of South Carolina's regulations.

summary judgment motion, concluding that those services did not fall within the term "trust business" as set forth in section 34-21-10. The master also concluded that these services were outside of BOFI's jurisdiction because they were regulated by the South Carolina Probate Code (Title 62). The master later denied BOFI's motion for partial reconsideration. This appeal followed.

LAW/ANALYSIS

I. Statutory Interpretation

BOFI asserts the master erred by determining that the undefined term "trust business" in section 34-21-10 excludes the services of a personal representative, conservator, guardian, and agent pursuant to a power of attorney.

Section 34-21-10 provides,

> No corporation, partnership or other person shall conduct a *trust business* in this State without first making a written application to [BOFI][4] and receiving written approval from [BOFI]. Before any such application shall be approved, [BOFI] shall make an investigation to determine whether or not the applicant has complied with all the provisions of law, whether in the judgment of [BOFI] the applicant is qualified to conduct such a business and whether the conduct of such a business would serve the public interest, taking into consideration local circumstances and conditions at the place where such applicant proposes to do business; provided, however, that any person actively engaged in conducting a trust business in this State on January 1, 1972, shall not be required to make the application and receive the approval provided for herein. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee, *executor,*

[4] This alteration is to the language "the State Board of Bank Control." According to BOFI, the State Board of Bank Control is now the State Board of Financial Institutions (BOFI).

> *administrator, guardian, committee or in any other fiduciary capacity*.

(emphases added).

"The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature." *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). "In interpreting a statute, the court will give words their plain and *ordinary* meaning[] and will not resort to forced construction that would limit or expand the statute." *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) (emphasis added).

> Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) (citation omitted). Further, "[t]he intention of the legislature must be gleaned from *the entire section and not simply clauses taken out of context*." *Singletary v. S.C. Dep't of Educ.*, 316 S.C. 153, 162, 447 S.E.2d 231, 236 (Ct. App. 1994) (emphasis added).

Respondents argue that the plain language of section 34-21-10 limits a trust business to one that administers trusts only. Although Respondents make colorable arguments, they are couched in terms of the absurdity of any other interpretation in light of the special circumstances of Respondents' particular businesses. Respondents seem particularly concerned about the amounts of BOFI's application fee and annual supervisory fee.[5] Although Respondents' principal, Stephen Mantell, is sympathetic, this court must be mindful of the far-reaching implications of section 34-21-10. The legislature's intent underlying the term "trust business" necessarily addresses circumstances far beyond the specific facts of this case.

[5] In their brief, Respondents state, "[T]he source of this litigation appears to be little more than [Respondents'] failure to pay a $15,000 application fee and annual $19,600 'supervisory fee' to [BOFI], and their refusal to voluntarily subject themselves to [BOFI's] jurisdiction."

Giving the term "trust business" its "ordinary meaning" establishes that *all* institutional fiduciaries fall within BOFI's regulatory authority. The usual and customary meaning of the term "trust" is recognized in secondary sources of law as including a range of fiduciary relationships. "A trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word 'trust' also is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts." 90 C.J.S. *Trusts* § 1 (December 2024 update). Respondents also cite to C.J.S. to support their argument that the usual and customary meaning of "trust business" excludes service as a personal representative, conservator, guardian, or agent: "It has been said that the primary and ordinary conception of a trust company is a corporation or institution organized to take and administer trusts, rather than carry on the ordinary functions of banking." 9 C.J.S. *Banks and Banking* § 650 (December 2024 Update). However, we note that this statement merely distinguishes between two different types of businesses—banks versus trust companies—and does not exclude certain services from "a corporation or institution organized to take and administer trusts," as evidenced by the title of section 650, i.e., "Distinction between bank and trust company." *Id.*

Further, in support of its argument that "trust business" ordinarily includes personal representatives, conservators, guardians, and agents, BOFI cites the definitions of the term in several other states' comparable statutes and to a nationwide compact between states for the regulation of state-chartered trust businesses that defines "trust business" as

> the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service as a fiduciary in the host state, including but not limited to:
>
> (a) acting as a fiduciary, or
>
> (b) to the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as custodian, assignee, bailee, conservator, transfer agent, escrow agent, registrar[,] or receiver; or (iii) acting as financial advisor, investment advisor, agent[,] or attorney-in-fact in any agreed upon capacity.

Nationwide Cooperative Agreement for Supervision and Examination of Multi-state Trust Institutions § 1.1(29). South Carolina executed this compact on June 19, 2018.

To the extent that the term "trust business" may be considered ambiguous, a statute "must be read *as a whole* and sections [that] are part of the same general statutory law must be construed together and each one given effect." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (emphasis added) (quoting *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). "We therefore should not concentrate on isolated phrases within the statute." *Id.* "Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* "In that vein, we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" *Id.* (alterations in original) (citation omitted) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008)).

Further, "[a] statute must receive a practical and reasonable interpretation consistent with the 'design' of the legislature." *Smith v. S.C. Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "The terms must be construed *in context* and their meaning determined by looking at the other terms used in the statute." *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004) (emphasis added).

BOFI correctly points out that the inclusion of "executor, administrator, guardian, committee or in any other fiduciary capacity" in the exceptions to the requirement for trust business licensure in section 34-21-10 shows that these activities would otherwise constitute a trust business if not undertaken by an exempt person, and to view this otherwise would render this final clause of section 34-21-10 "surplusage or superfluous." *See CFRE,* 395 S.C. at 74, 716 S.E.2d at 881 ("[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (alterations in original) (citation omitted) (quoting *Sweat*, 379 S.C. at 377, 382, 665 S.E.2d at 651, 654)); *Singletary*, 316 S.C. at 162, 447 S.E.2d at 236 ("The intention of the legislature must be gleaned from *the entire section and not simply clauses taken out of context*." (emphasis added)).

As to the context in which section 34-21-10 appears, there are numerous sections within the same general statutory law that show the legislature's intent to include personal representatives, conservators, guardians, and agents within the term "trust business." *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that a statute "must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect" (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629)); *Hinton*, 357 S.C. at 332, 592 S.E.2d at 338 ("The terms must be construed *in context* and their meaning determined by looking at the other terms used in the statute." (emphasis added)).

First, in determining the legislature's intended meaning of "trust business" for purposes of Chapter 21 of Title 34, the following definitions in Article 3, which covers common trust funds,[6] are instructive:

> The following terms used in this article shall have the meanings ascribed to them in this section unless the context indicates otherwise:
>
> (1) "Trust institution" means any state bank, any national bank, any building and loan association, savings association, savings and loan association, savings bank, or any trust company authorized to conduct *a trust business in this State*, *or any trust company, authorized to act in a fiduciary capacity in this State*, and *under the supervision of* the Comptroller of the Currency of the United States, or the Federal Reserve System, or the State Board of Bank Control of South Carolina;
>
> (2) The term "fiduciary" means a trust institution undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and *includes trustee, executor,*

[6] "The term 'common trust fund' means a fund maintained by a trust institution, exclusively for the collective investment and reinvestment of moneys contributed thereto by the institution in its capacity as a fiduciary or cofiduciary and established, maintained and administered pursuant to the requirements of [Article 3.]" S.C. Code Ann. § 34-21-210(3) (2020).

> *administrator,*[7] *guardian of estates,*[8] *committee of estates of persons non compos mentis,*[9] *and managing agent*[.]

S.C. Code Ann. § 34-21-210(1), (2) (2020) (emphases added).[10] The emphasized language indicates that the legislature intended for the term "trust business" to include a business providing services as a personal representative, guardian, conservator, or agent. Further, section 34-21-20 clearly governs organizations like Respondents: "All state[-]chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by [BOFI] and are further subject to rules and regulations promulgated by [BOFI]."

Respondents argue that the language in this provision stating "trust companies, and fiduciary corporations authorized to conduct a trust business in this State" "recognize[s] that there are 'fiduciary corporations' who are not engaged in 'trust business.'" However, given that BOFI is charged with regulating an industry affecting large sums of client funds, it is unlikely that the legislature intended to draw a distinction between the *types* of fiduciary services to be regulated, e.g., trustee services versus conservator services. This is obvious in the next section of Chapter 21, S.C. Code Ann. § 34-21-30 (2020):

> Banks, trust companies, or corporations *acting in a fiduciary capacity* shall segregate all assets held in *any* fiduciary capacity from the general assets of the bank, trust company, or corporation and shall keep a separate set of books or records showing in proper detail all transactions relative to this fiduciary business, and these books and records must be under the management of an officer whose duty must be prescribed by the board of directors.

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[7] Section 62-1-201(33) (2022) provides that the term "personal representative" includes an executor or an administrator.

[8] *See* § 62-1-201(18) (2022) ("'Guardian' means a person appointed by the court as guardian, but excludes one who is a guardian ad litem.").

[9] *See* § 62-1-201(6) (2022) ("'Conservator' means a person who is appointed by a court to manage the estate of a protected person.").

[10] *See also* S.C. Code Ann. § 34-21-220(1) (2020) (allowing collective investment of funds and referencing trust institutions "in their capacities as executor, administrator, committee, guardian, or trustee under a will or deed").

(emphases added). *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that a statute "must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect" (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629)); *Hinton*, 357 S.C. at 332, 592 S.E.2d at 338 ("The terms must be construed *in context* and their meaning determined by looking at the other terms used in the statute." (emphasis added)). The requirement in section 34-21-30 for fiduciary assets to be segregated from the other funds of the business is consistent with a broad definition of "trust business" that includes fiduciaries other than strictly trustees.

It logically follows that if any institutional fiduciary, whether serving as a trustee, personal representative, guardian, conservator, or agent, maintains possession of beneficiary funds, that particular fiduciary is subject to regulation by BOFI. In other words, common sense dictates that if a business entity is in possession of someone else's money, BOFI should have regulatory authority over that entity. *See Ex parte Michie*, 167 S.C. 1, 27, 165 S.E. 359, 367 (1932) (describing preceding versions of Title 34 and stating "[w]hen the act [of 1911] was passed, banks were almost sacrosanct in the eyes of the people of the state. The lawmakers, when they granted them power to become *executors, administrators, guardians, and trustees*, must have realized that they were creating for them a different status in the law than that of an individual executor, but had faith in their fidelity and the security of the funds [e]ntrusted to them. *The epidemic of bank failures which followed in the years preceding 1930 showed them the fallacy of their faith and induced the passage of the act of 1930, which accurately defines the duties of such fiduciaries in the handling of trust funds*." (dictum) (emphases added)).

Based on the foregoing, the term "trust business" necessarily encompasses fiduciary services provided by not only the trustee of a trust but also a personal representative, conservator, guardian, or agent. Therefore, we reverse the master's conclusion to the contrary.

II. Regulation of Fiduciaries

Next, BOFI assigns error to the master's conclusion that South Carolina's probate courts regulate personal representatives, conservators, guardians, and agents and, therefore, BOFI "does not control [or] regulate these functions." We agree with BOFI that the jurisdiction of the probate court and the regulatory authority of BOFI can coexist, "allowing the probate courts to adjudicate protective proceedings and

matters of estate administration while BOFI oversees and regulates the business activities of entities serving in fiduciary capacities."

In his order, the master stated,

> The South Carolina Probate Code specifically sets forth the requirements and regulations for, and the probate court's appointment of, non-trustee fiduciary roles including conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor. *See*[,] *e.g.*[,] S.C. Code §§ 62-5-308; 62-5-408; 62-5-405; 62-8-102(1); 62-3-203. Because these roles are codified in the Probate Code and are regulated by the probate courts, [BOFI] does not control and regulate these functions. These areas are outside BOFI's jurisdiction.

We disagree with the master's reasoning that matters regulated by the Probate Code cannot also fall within BOFI's authority. The master implicitly recognized that the two can coexist when he accepted BOFI's argument that it has regulatory authority over institutions serving as trustees despite sections 62-1-102 and 62-3-913 of the South Carolina Code (2022) giving the probate court authority over testamentary trusts. Section 62-1-102 states, "(a) This Code shall be liberally construed and applied to promote its underlying purposes and policies. (b) The underlying purposes and policies of this Code are . . . to facilitate use and enforcement of certain trusts." Further, section 62-3-913 states,

> (a) Before distributing to a trustee, the personal representative may require that the trust be registered *if the state in which it is to be administered provides for registration* and that the trustee inform the beneficiaries as provided in Section 62-7-813.
>
> (b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court *to require that the trustee post bond* if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(emphases added). These provisions are in fact complemented by the requirement in section 34-21-10 to obtain BOFI approval before a non-exempt entity may serve as a fiduciary and the requirement in section 34-21-20 that such authorized fiduciaries are subject to examination by BOFI and to BOFI's regulations. Further, section 34-15-20 requires a non-exempt bank or trust company to "execute and file approved fiduciary bonds" when fiduciary bonds are required of "individual persons under like circumstances." This provision complements subsection (b) of 62-3-913 (quoted above) in particular.

Further, "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). We agree with BOFI that the Banking Code addresses the qualification of non-exempt entities serving in fiduciary appointments in a more specific and definite manner than the Probate Code. Citing to section 34-15-10 of the South Carolina Code (2020), BOFI correctly asserts, "the Banking Code directly acknowledges and incorporates the probate court's general power of appointment, while also establishing BOFI's specific oversight of the qualifications for a trust company to serve under such a court appointment." Section 34-15-10 provides for the general authority to act as a fiduciary:

> Subject to the provisions of Section 62-3-203 [(establishing the priority among persons seeking appointment as personal representative of an estate)], a banking corporation or trust company *with at least two hundred fifty thousand dollars total unimpaired capital* may be appointed executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property, *under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the appointment as a legally qualified person*.

(emphases added). We agree with BOFI that this provision acknowledges the probate court's power to appoint a person as a personal representative, guardian, or conservator but also establishes the requirement for a banking corporation or trust

company to be legally qualified to accept an appointment, and in this respect, serves as a "qualifier of" the Probate Code's provisions regarding fiduciary appointments by dealing with the "identical issue in a more specific and definite manner." *Capco*, 368 S.C. at 142, 628 S.E.2d at 41.

Moreover, the probate court does not have the authority to examine or investigate any person or entity whereas BOFI does have this authority. *See* § 34-21-10 ("Before any such application shall be approved, [BOFI] shall *make an investigation* to determine whether or not the applicant has complied with all the provisions of law, whether[,] in the judgment of [BOFI,] the applicant is qualified to conduct such a business[,] and whether the conduct of such a business would serve the public interest . . . ." (emphasis added)); § 34-21-20 ("All state[-]chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are *subject to examination* by [BOFI] and are further subject to rules and regulations promulgated by [BOFI]." (emphasis added)); S.C. Code Ann. § 62-5-414(B) (2022) ("Nothing herein shall require the court to oversee or approve the conservator's investment choices."). Unlike the probate court, BOFI's regulatory authority is not based on individual proceedings and its jurisdiction is not limited by county or controversy.

Additionally, "[s]tatutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000). In *Hodges*, our supreme court rejected the defendant's argument that the Restructuring Act impliedly repealed Santee Cooper's enabling legislation. *Id.* at 88–89, 533 S.E.2d at 583. Among other reasons, the court stated that both statutes provided "alternative and complementary means of removal [of Santee Cooper board members]" and that Santee Cooper's enabling legislation, which allowed the removal of a board member "for cause," acted as an important safety net. *Id.* at 89, 533 S.E.2d at 583. The court explained that the Restructuring Act did not affect the advisory board's removal power "for cause" but merely allowed the Governor to remove a director at his or her discretion, allowing the Governor "to remove a director with whom he or she cannot work." *Id.*

The provisions in Title 34 and the Probate Code affecting fiduciaries can be reconciled in a similar fashion. Therefore, we reverse the master's conclusion that the roles of personal representatives, conservators, guardians, and agents are outside BOFI's regulatory jurisdiction.

CONCLUSION

Accordingly, we reverse the master's conclusions that the term "trust business" excludes the services of personal representatives, conservators, guardians, and agents and that these roles are outside BOFI's regulatory jurisdiction. Further, we remand to the master to enjoin Respondents' services as a personal representative, conservator, guardian, or agent without first complying with section 34-21-10.

REVERSED AND REMANDED.

WILLIAMS, C.J., and GEATHERS and TURNER, JJ., concur.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2023-000017

South Carolina Board of Financial Institutions ..... Appellant,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Respondents.

PETITION FOR REHEARING

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June 12, 2025

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PETITION FOR REHEARING

Rule 221(a), SCACR, provides that a petition for rehearing should be granted when the Court has "overlooked or misapprehended" relevant information or law. Respectfully, that is the case here. The Court's reversal of the trial court's plain-language reading of "trust business" in South Carolina Code § 34-21-10 conflicts with how the Board of Financial Institutions and the Attorney General have construed that phrase for decades. It conflicts with well-settled rules for statutory construction. And, critically, the Court's opinion has created immediate turmoil within the state's Probate Court about appointing Respondents to serve as non-trustee fiduciaries for some of South Carolina's most vulnerable citizens. This is an important case that should be reconsidered.

The Probate Court counts on Respondents CDM Corporation and Guardian Fiduciary Services and companies like them to serve when needed to protect incapacitated individuals. But the Court's opinion eliminates these providers as an essential option—even though they fill a gap in the market that exists because these incapacitated citizens have no one else available to provide non-trustee fiduciary services—when the Probate Court is searching for someone to help.

As a telltale sign that the Court's analysis overreads "trust business" to reach Respondents, the Board of Financial Institutions *doesn't even have an option for companies like Respondents to apply to be a "trust business."* The Board's "Applications Manual"—which was last updated on June 2, 2025, after the Court issued its opinion—says that only Banks, Credit Unions, Savings Associations, and Savings Banks can apply for "trust powers." State of South Carolina Board of Financial Institutions, *Applications Manual* at 6 ("Trust Powers"), *available at* Applications Manual 6.2.2025.pdf And it recognizes that Section 34-21-10 applies to Banks or "Out-of-State Non-Depository Trust Companies," not to providers like Respondents that do not provide trust services. *Id.* at 6–7. Respectfully, the Court's opinion should be revisited.

I The Opinion contradicts well-established rules of statutory construction.

The Court's Order holds that companies that provide ***any*** fiduciary services fall within the term "trust business," a statutory phrase that appears in the state's Bank Code as part of an overall statutory scheme which is aimed exclusively at regulating companies that invest in "common trust funds" (which Respondents indisputably do not). In other words, following the Court's opinion, a company that serves as a fiduciary in any capacity, but is not a trustee and does not invest client funds in a "common trust fund," is nevertheless a "trust business" now regulated by the Board of Financial Institutions as part of its limited jurisdiction to oversee companies that invest in "common trust funds."

Respectfully, this cannot be what the General Assembly meant when it revised Section 34-21-10 in 1972, and before this case, no one ever suggested that it did. The circuit court reviewed the simple two-word phrase "trust business" and held that it means exactly what the words say: "a business involved with the administration of trusts." (R. p. 4; Circuit Court's Order at 5.) That matched the Board's historic understanding of its authority. (R. p. 199; Mantell Aff. ¶ 12.) It matched what the Attorney General historically advised the public. (R. p. 219; 1996 S.C. AG LEXIS 25, at *7 (Feb. 9, 1996).) And it matched the overall structure of Title 21 of the State Bank Code, which is aimed at regulating companies that invest in "common trust funds."

Instead of giving the words "trust business" their plain-language, long-established, and whole-of-the-statute meaning, the Court's analysis isolated the last sentence of Section 34-21-10 from the rest of the entire statutory scheme and placed disproportionate and out-of-context weight on that single sentence. (Op. at 5–8.) That sentence says only that the statutory scheme regulating companies that invest in common trust funds and a statutory provision grandfathering in companies engaged in "trust business" as of January 1, 1972, do not somehow create an impediment for "a

natural person or a national bank association having a principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." S.C. Code Ann. § 34-21-10.

This analysis runs contrary to several rules of statutory construction. First, words and phrases within a statute must not be finely sliced, but instead must be read "as a whole and in a manner consistent and in harmony with its purpose." *Smith v. S.C. Ins. Co*., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). But by reaching its holding based on the final sentence of Section 34-21-10, the Court improperly isolated the last sentence of Section 34-21-10 from the rest of that same section (which limits the Board's authority to companies involved in a "trust business"), from the rest of Chapter 21 (which makes clear that the Board's jurisdiction is designed to reach companies that invest in "common trust funds"), and from the rest of the South Carolina Code as a whole (which repeatedly distinguishes between "trustees" and all other types of fiduciaries).

Second, the Court respectfully appears to misunderstand the purpose of Section 34-21-10's final sentence. It was added through a 1972 amendment to Section 34-21-10, and it was not designed to expand the definition of "trust business" to all types of fiduciaries; instead, it served to harmonize South Carolina law with the federal legislation passed before it, as Respondents explained during oral argument in this matter. The last sentence of Section 34-21-10 tracks the language of 12 U.S.C. § 92a, which provides that national banks have the same fiduciary authority allowed at the state and local level, which can include trustee, executor, administrator, guardian, and "any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act." 12 U.S.C. § 92a. The final sentence of Section 34-21-10 was never intended to expand the meaning of "trust business" or the Board's jurisdiction, but rather harmonizes state law with federal law to provide that nothing

within Section 34-21-10 is intended to contradict 12 U.S.C. § 92a. And because this final sentence serves the function of melding state law with federal law, understanding this sentence in its proper context does not render it "surplusage," as the Court's opinion suggests. (Op. at 8.)

Third, the very sentence upon which the Court based its analysis distinguishes "trustee" from all other types of fiduciary roles. But the only fiduciary role over which the General Assembly gave the Bank Board jurisdiction is for "trust business." When a statute specifically includes one item, the statute necessarily excludes all other items that the Legislature did not include. *See Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed. 1999))). Likewise, when a statute uses only one word—here, "trust"—a court cannot rewrite the statute to add words—here, "any institutional fiduciary, whether serving as a trustee, personal representative, guardian, conservator, or agent" (Op. at 11). *See, e.g.*, *Ballard v. Newberry County*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021) ("We are not at liberty to add to the statutory law or subtract from it.").

Fourth, there is no way to harmonize the Court's conclusion with other parts of the Bank Code. Consider South Carolina Code § 34-21-20, which authorizes the Board to examine and regulate "trust companies, and fiduciary corporations authorized to conduct trust business." Through Section 34-21-20, the General Assembly explicitly recognized that there are some "fiduciary corporations" that are not engaged in "trust business"—like Respondents—and it did not include them within the scope of the Board's authority. The Court's opinion wipes out this written-into-the-statute distinction created by the General Assembly.

Finally, the Court looks to Article 3 within Chapter 21 to reinforce its conclusion, but that article fully supports the Respondents' overarching point: the Bank Board's regulatory authority over "trust business" is limited to companies who invest in "common trust funds." Common trust funds, as set forth in Article 3 (and its federal corollary 26 U.S.C. § 584), are creatures of statute. The purpose of Article 3 is to regulate banks and "trust institutions" investing ***trust money*** in a ***common trust fund***—which has nothing to do with Respondents or the fiduciary services they provide. In other words, the definitions within Article 3 are simply inapplicable to institutions, like Respondents, that do not invest trust money into a common trust fund.

* * * * *

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey v. Hailey*, 404 S.C. 320, 324, 745 S.E.2d 81, 82 (2013). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and a court has no right to impose another meaning. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute").

The General Assembly has vested the Bank Board with regulatory authority over companies engaged in "trust business." Respondents are not engaged in "trust business." They provide fiduciary services to elderly, disabled, or otherwise compromised individuals of South Carolina to ensure their physical, emotional, and medical needs are protected, specifically in situations where there is no one else to serve in that role (issues about which the Bank Board has absolutely no expertise or experience). If the General Assembly wants to expand that regulatory authority to "fiduciary business," then it is free to do so. And there is no doubt the General Assembly repeatedly distinguishes between "trusts" and other types of fiduciaries: it lists different

non-trustee fiduciaries in Section 34-21-10; it acknowledges that some "fiduciary corporations" are not engaged in "trust business" in Section 34-21-20; and it specifically carves all other types of fiduciaries out of the definition of "trust" elsewhere in state law, such as Section 62-1-201(49).

At present, the Legislature has given the Bank Board authority over only companies operating in a "trust business," which the General Assembly explained to be companies investing in a common trust fund. The Court's opinion expanding "trust business" beyond its statutory bounds should be reconsidered accordingly.

II. The consequences of the Court's decision will be calamitous for vulnerable South Carolinians.

The Court's ruling in this matter will have—and has already begun to have—adverse ramifications within the Probate Court. The Court's decision eliminates a key tool of the Probate Court to appoint fiduciary companies to serve South Carolinians and prevents that court from utilizing companies like Respondents to serve as non-trustee fiduciaries to vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those with no relative or family member that is willing, capable or qualified to serve.

With this order, the Court reopens a critical gap, leaving South Carolinians in need of help, but with no one willing or able to provide it. The Court's expansive definition of "trust business" forecloses fiduciary companies' ability to serve as a fiduciary unless approved by and under the supervision of the Bank Board—a state agency that is unqualified and unequipped to regulate the fiduciary services provided by Respondents, and whose own "applications manual" doesn't even contemplate Respondents and companies like them applying to be a "trust business."[1]

[1] In its Order, the Court also notes Respondents' mention of the Board's $15,000 application fee and annual $19,600 "supervisory fee." Despite the Court's contention, Respondents do not reference these fees to complain of the expense (though such a complaint would be legitimate from small businesses like Respondents), but rather to highlight the Board's apparent motivation in

In the agency's own words: "The mission of the Board of Financial Institutions is to protect the citizens of South Carolina by preserving a sound financial industry through effective and efficient regulatory oversight of *financial institutions* in order to strengthen consumer confidence, assure reliable access to *financial services*, and encourage economic growth." Board of Financial Institutions Mission Statement (emphasis added). This mission has nothing to do with helping wards, or the vulnerable, or the incapacitated, but the Bank Board's jurisdictional overreach and the Court's opinion endorsing it, have handicapped the Probate Court's ability to serve those citizens who most desperately need the Respondents' services.

III. The Legislature defines the boundaries of an agency's authority, not the Judiciary and not an agency itself.

In support of its adoption of the Board's definition of "trust business" to encompass all fiduciary services, the Court cites to "a nationwide compact between states" joined by the Board in June 2018 that expansively defines "trust business." But the Bank Board's decision to join this nationwide compact—which was not endorsed by the General Assembly—has no bearing on the powers delegated by the General Assembly to the agency.

Because the Board is created by the General Assembly, it only has the powers the Legislature gives to it. *See, e.g.*, *Med. Soc'y v. MUSC*, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999) (holding that the MUSC Board of Trustees did not have "the power to dispose of real or personal property" because "[a]n agency created by statute has only the authority granted it by the legislature," and there was no such authority expressly stated in the State Code). The Court is

seeking to expand its jurisdiction. Grabbing additional fees provides explanation as to (1) why the Board seeks expand its regulatory authority over fiduciaries completely uninvolved in financial services, and (2) why the Board inexplicably changed its prior position that non-trustee fiduciaries were not "trust businesses" regulable under Section 34-21-10.

"bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003).

A compact entered by the Board alone has zero impact on its scope of authority and regulatory power. Justice Kittredge was clear in his warning against this exact type of jurisdiction-expansion: "In South Carolina, to preserve some semblance of the separation of powers we once held sacred, an administrative agency may not make law without legislative oversight and approval." *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). Respectfully, the Court was mistaken in considering this executive-branch compact as support to confirm the Board's expansion of regulatory authority beyond "trust businesses," as granted by the General Assembly.

Further, the Court appears to have misconstrued the Respondents' position regarding the coexistence of the Probate Court and the Board. Respondents have never contended that matters regulated by the Probate Court cannot also fall within the Board's authority. Respondents do, however, dispute the Board's overarching theme of "If not us, then who?" when it comes to regulating non-trustee fiduciaries.

The Board has argued that its unilateral expansion of its oversight from "trust business" to "all fiduciary business" must be justified because there is no other source of oversight of non-trustee fiduciaries, but this is false. It is simply inaccurate to suggest that Respondents or anyone else performing fiduciary services unrelated to trusts can slip through the cracks, unregulated. When the Probate Court appoints Respondents or anyone else to serve as a guardian, or a conservator, or a personal representative, it retains jurisdiction over that appointee and has full authority to monitor and penalize the appointee should it breach its fiduciary responsibilities. *See* S.C. Code Ann. § 62-1-112 ("The inherent power of the court to impose penalties for contempt

extends to all filing requirements, proceedings, judgments, and orders of the court."). Moreover, the common law recognizes a private cause of action for breaching a fiduciary duty. *See generally Bennett v. Estate of King*, 436 S.C. 614, 626–27, 875 S.E.2d 46, 52–53 (2022) (analyzing a claim for breach of fiduciary duty that arose in the context of a personal representative's conduct after being appointed by the Probate Court, and listing numerous cases where a breach had been affirmed).

The Respondents did not contend that the Bank Board and the Probate Court can never have concurrent oversight, and the Court appears to have misunderstood this aspect of the Respondents' argument. Whether the Bank Board and the Probate Court can have concurrent jurisdiction over non-trustee fiduciaries is a decision is for the Legislature to make, but there is no basis for judicially expanding the Board's regulatory power beyond "trust businesses" investing in a "common trust fund," as currently provided by the General Assembly. The Court should reconsider its improper expansion of the narrow authority given to this state agency.

CONCLUSION

The Court's decision to construe the phrase "trust business" to include every conceivable type of fiduciary, irrespective of whether a "trust" is actually involved, is inconsistent with the plain language of South Carolina Code § 34-21-10, is inconsistent with the Board's fundamental purpose of regulating banks and is inconsistent with every applicable norm of statutory construction. Moreover, the ramifications of such a decision have imperiled vulnerable South Carolinians who depend on the services offered by Respondents and other businesses like it. Accordingly, Respondents respectfully request the Court grant their petition for rehearing and reinstate the circuit court's straightforward, plain-language construction of the phrase "trust business."

Respectfully submitted,

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June 12, 2025

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SC Court of Appeals

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Respondents, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by emailing a copy of the same to the following address(es):

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June 12, 2025

The South Carolina Court of Appeals

South Carolina Board of Financial Institutions,
Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Respondents.

Appellate Case No. 2023-000017

ORDER

After careful consideration of the petition for rehearing, the court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

MOTION TO PUBLISH OPINION

COMES NOW THE APPELLANT, the South Carolina Board of Financial Institutions ("BOFI"), and moves this Court to publish Opinion No. 2025-UP-169, issued May 28, 2025.

BOFI is tasked with enforcing S.C. Code Ann. § 34-21-10, which prohibits unauthorized trust business, the violation of which poses a genuine risk to the most vulnerable citizens of South Carolina. A published opinion will serve the public interest by providing certainty to financial and legal professionals, deter future unlawful trust appointments, and support BOFI's efficient use of state resources as it acts to halt unlawful trust business in South Carolina.

I. A Published Opinion Will Provide Certainty in Circumstances Beyond the Specifics of this Case

Publishing this decision will provide certainty to the banking and trust industry, the bench, the bar, and future litigants regarding the matter of trust business. The Court's opinion clearly and

explicitly defines the term "trust business," as used in S.C. Code Ann. § 34-21-10, for the first time in South Carolina appellate jurisprudence. The Court correctly acknowledges "the far-reaching implications of section 34-21-10," and states that "The legislature's intent underlying the term 'trust business' necessarily addresses circumstances far beyond the specific facts of this case." (p. 6). The public interest would be served by establishing precedent in this area of law.

II. A Published Opinion Will Deter and/or Prevent Future Unauthorized Trust Business

Publishing this Court's opinion will deter, and in many cases preclude unauthorized trust business. Preventing unauthorized trust business is critical because these entities' operations are difficult and time-consuming to untangle—requiring judicial action, sometimes by multiple courts in multiple jurisdictions. The process of transitioning vulnerable citizens' interests to a qualified fiduciary could result in delays or even lapses in service, placing vulnerable citizens at risk.

A published opinion will instruct attorneys regarding the appropriate fiduciaries to whom they may refer their clients, and significantly reduce referrals to unauthorized trust businesses. As the Court's opinion acknowledges, "Most of Respondents' clients are referrals from South Carolina attorneys." (p. 2). It is likely that other unauthorized trust businesses obtain clients in the same manner. A published opinion would reduce these unauthorized trust businesses' access to clients.

Likewise, a published opinion will inform probate court judges in determining the propriety of the fiduciary appointment requests before them, and greatly reduce fiduciary appointments that, if accepted, would result in unauthorized trust business.

III. A Published Opinion Will Support the Efficient Use of State Resources

BOFI expended significant time and resources to pursue the present matter over the course of nearly five years— motivated in part by the possibility of creating precedent which would serve the purposes listed above.

BOFI remains confident and steadfast in its interpretation of the law and stands ready to enforce it; however, without a published opinion, BOFI's enforcement of S.C. Code Ann. § 34-21-10 could invite another prolonged and extensive litigation process. This would be a regrettable and avoidable draw on state resources from both the executive and judicial branches.

In this context, it is important to note that unlawful trust business is susceptible to repetition. This is evidenced in the present case, in which a single principal has conducted unauthorized trust business under at least three corporate names (CDM Corporation, Guardian Fiduciary Services, LLC, and Senior Helpers), across multiple counties.

Conversely, a published opinion would allow BOFI to efficiently and effectively regulate, and litigate if necessary, with the State's regulatory framework benefiting from and building upon BOFI's efforts in the present litigation.

In conclusion, publishing the Court's opinion will provide important and needed guidance, mitigate future unauthorized trust business, and support BOFI in its enforcement of the plain language of S.C. Code Ann. § 34-21-10. Therefore, BOFI respectfully requests that this Court publish Opinion No. 2025-UP-169.

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June 12, 2025

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Jun 12 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, …….. Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Respondents.

CERTIFICATE OF SERVICE

This is to certify that today undersigned counsel for the Board of Financial Institutions served a copy of this MOTION TO PUBLISH OPINION by electronic mail delivery of same to the recipients listed, and at their Attorney Information System provided e-mail addresses:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2023-000017

South Carolina Board of Financial Institutions ..... Appellant,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Respondents.

RESPONDENTS' OPPOSITION TO MOTION TO PUBLISH

Respondents CDM Corporation, Inc. and Guardian Fiduciary Services, LLC hereby file this response in opposition to Appellant South Carolina Board of Financial Institution's Motion to Publish Opinion No. 2025-UP-169, issued May 28, 2025. As detailed in Respondents' Petition for Rehearing, the Opinion issued in this matter should be reconsidered. Respectfully, it is an expansive ruling that conflicts with the plain language of the statute, and the General Assembly's unmistakable intent, and the historic interpretations of Section 34-21-10 by both the Bank Board itself and the Attorney General.

Further, the fact the Bank Board seeks through its Motion to Publish to expand its jurisdiction to reach fiduciary roles and appointments of other companies who, like the Respondents, provide fiduciary services unrelated to "trust business" should prompt the Court to pause and give careful reconsideration to its earlier ruling. If such expansion of an executive agency's authority is to happen, it can and should only be done by the General Assembly after

evaluating the full scope of what's being asked, not through a request that the Judiciary construe the phrase "trust business" to mean "both trust and non-trust business."

As it stands, the Court's construction of "trust business" reaches *inter alia* guardians who are appointed by the Probate Court to care for wards and help them make decisions about where to live, whether they can travel, whether they can operate a vehicle, and whether they can vote. S.C. Code Ann. § 62-5-304A(A). If the Legislature truly intended the Bank Board to have any role over such non-trust fiduciaries, then it can say so. But the fact that the Bank Board craves such authority without going through the legislative process and without any legitimate basis—what possible expertise does that agency have in overseeing such healthcare, end-of-life, daily activities decisions?—should prompt the Court to look favorably on the Respondents' petition for rehearing.

I The Opinion should be reconsidered.

The Court's Order holds companies that provide ***any*** fiduciary services fall within the term "trust business," and are therefore regulated by the Board of ***Financial Institutions,*** even where the fiduciary company does not provide services relating to trusts or investing in common trust funds. Respectfully, this decision goes against the Board's historic understanding of its own authority, (R. p. 199; Mantell Aff. ¶ 12), how the Attorney General has historically advised the public, (R. p. 219; 1996 S.C. AG LEXIS 25, at *7 (Feb. 9, 1996)), and numerous well-established rules of statutory construction that are outlined in the Respondents' rehearing petition.

To summarize: the Court improperly isolated the last sentence of South Carolina Code § 34-21-10 when interpreting "trust business." In doing so, the Court appears to misunderstand the purpose of the last sentence of Section 34-21-10, which is to harmonize South Carolina law with the language of 12 U.S.C. § 92a passed before it. Further, the very sentence upon which the Court based its analysis distinguishes "trustee" from all other types of fiduciary roles. But the only

fiduciary role over which the General Assembly actually gave the Board jurisdiction is for "trust business." When a statute specifically includes one item, it necessarily excludes all other items that the Legislature did not include. *See Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed. 1999))).

The Court's reliance on Article 3 within Chapter 21 to reinforce its conclusion is likewise misplaced. The purpose of Article 3 is to regulate banks and "trust institutions" investing ***trust money*** in a ***common trust fund***—which has nothing to do with Respondents or the fiduciary services they provide. Article 3 and the definitions therein are inapplicable to Respondents because they do not invest trust money into a common trust fund.

At bottom, Section 34-21-10 grants the Bank Board regulatory authority over companies engaged in "trust business." Respondents are not engaged in "trust business." They provide fiduciary services to elderly, disabled, or otherwise compromised individuals of South Carolina to ensure their physical, emotional, and medical needs are protected, specifically in situations where there is no one else to serve in that role (issues about which the Bank Board has absolutely no expertise or experience). The Respondents do their work at the appointment of, direction of, and supervision of the Probate Court, which has the expertise the Bank Board entirely lacks over such issues. The Court's opinion expanding "trust business" beyond its statutory bounds should be reconsidered.

II. The Court should consider the Board's motivation for seeking such a vast expansion of power outside of the legislative process.

Respondents respectfully ask the Court to pause and reflect upon what the Board is requesting and why. The agency was established for the following purpose: "The Board may

supervise all banks and building and loan associations and provide regulations and instructions for the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof, as may be necessary or proper to effectuate the purposes of this Title." S.C. Code Ann. § 34-1-60. That has nothing to do with the Respondents' services as a non-trustee fiduciary, and it appears to be a far cry from the result of the Court's Opinion, which construes the phrase "trust business" to reach fiduciaries who are providing non-trustee, non-financial services.

By asking the Court to publish its Opinion so that the Bank Board can regulate other non-trustee companies in addition to these Respondents, the executive-branch agency appears to be trying to use the Judiciary, rather than the legislative process, to expand the limited jurisdiction over "trust business" the Legislature gave the agency. If the Bank Board truly believes its jurisdiction should expand to regulate non-trustee fiduciaries—such as those serving wards, or the vulnerable, or the incapacitated, irrespective of the subject matter of the fiduciary's appointment—then it should go to the General Assembly and explain why it needs this additional jurisdiction.[1]

But more importantly, seeking to expand its jurisdiction through the Judiciary and outside of the legislative process is inconsistent with basic separation of powers, and the agency's Motion to Publish appears to be precisely the type of overreach that the Supreme Court specifically warned against in *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring).

Accordingly, the Respondents respectfully request that the Court reconsider its earlier Opinion, both in light of the unintended consequences of its expansive construction of "trust

[1] Such an explanation is of course implausible, as the Bank Board is obviously not qualified to regulate the medical, end-of-life, daily-activities, and other non-financial decisions entrusted by the Probate Court to fiduciaries.

business" and the agency's attempt to parlay that Opinion into an expansion of its jurisdiction beyond that which could have been intended by the General Assembly.

CONCLUSION

Respondents respectfully request the Court deny Appellant's Motion to Publish.

Respectfully submitted,

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June 23, 2025

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Respondents, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by emailing a copy of the same to the following address(es):

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The South Carolina Court of Appeals

South Carolina Board of Financial Institutions,
Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services,
LLC, Respondents.

Appellate Case No. 2023-000017

ORDER

Appellant has filed a motion requesting this court to publish Opinion No. 2025-UP-169 filed on May 28, 2025. The motion is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Court of Appeals Opinion 2025-UP-169
(filed May 28, 2025, rehearing and motion to publish denied July 3, 2025)

South Carolina Board of Financial Institutions ..... Respondent,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Petitioners.

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"In South Carolina, to preserve some semblance of the separation of powers we once held sacred, an administrative agency may not make law without legislative oversight and approval."

Joseph v. S.C. LLR, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring).[1]

QUESTION PRESENTED

South Carolina Code § 34-21-10 gives the South Carolina Board of Financial Institutions (the "Bank Board") authority to regulate companies engaged in a "trust business." The circuit court held that this two-word phrase means "a business involved with the administration of trusts." (R. p. 8.) The Attorney General also endorsed this limited scope of the agency's authority. (R. p. 220.)

Nevertheless, the Bank Board asked the Court of Appeals to broadly construe the phrase "trust business" to give the agency regulatory authority over all entities that provides any type of fiduciary services, not just "trusts," including all such fiduciaries who are appointed by the Probate Court to provide services to South Carolina's most vulnerable citizens: guardians, conservators, personal representatives, agents, and those providing power-of-attorney services, to name just five.

The Court of Appeals agreed with the agency and expansively construed the phrase "trust business" to now include "all institutional fiduciaries," including but not limited to those appointed to serve as a "personal representative, conservator, guardian, or agent." (Op. at 7, 11.)

Did the Court of Appeals err when it expanded the Bank Board's jurisdiction by construing the phrase "trust business" to mean "all institutional fiduciaries," including but not limited to guardians, conservators, personal representatives, agents, and any other provision of a fiduciary service that is directed by the Probate Court?

---

[1] This statement is found in Justice Kittredge's concurrence in *Joseph*, but the lead opinion—authored by Justice Toal and joined by Justice Hearn—agreed. *See* 417 S.C. at 455 n.3, 790 S.E.2d at 773 n.3 ("We embrace completely the excellent comprehensive analysis of administrative agency rulemaking set forth in sections I, II, and III of Justice Kittredge's concurring opinion."). Undoubtedly, this statement reflects the position of both the Court and the Constitution.

INTRODUCTION

Until the initiation of this lawsuit, companies that provide non-trustee fiduciary services—like the Petitioners, CDM Corporation and Guardian Fiduciary Services—functioned at the appointment of and under the oversight of the Probate Court. That court routinely appoints Petitioners (and companies like them) to provide fiduciary services for vulnerable South Carolinians who do not have a family member or friend willing to provide those services. For instance, when a "guardian" is needed for a "ward" in a remote part of South Carolina who otherwise has no one to look after his or her interests, the Probate Court calls upon Petitioners to fill that gap, and then it supervises the Petitioners as they perform their fiduciary function.

Years ago, the Bank Board confirmed to the Petitioners' principal that their provision of these fiduciary services did not amount to a "trust business" subject to the agency's jurisdiction. (R. p. 200.) And it was right to do so, as the Legislature created the Bank Board only to "supervise all banks and building and loan associations," not guardians or conservators. S.C. Code Ann. § 34-1-60. Within that, the General Assembly gave the agency authority over companies who operate a "trust business," *id.* § 34-21-10, which it generally described as companies that invest in and maintain "common trust funds," *id.* §§ 34-21-210 to -430. That has nothing to do with providing fiduciary services that help the daily management of the lives of vulnerable South Carolinians.

But for reasons unknown, the Bank Board changed its position, initiated this lawsuit to expand through judicial decree its jurisdictional scope from the limitations provided by the Legislature, and then issued a self-serving "Policy Statement" during litigation that it trumpeted as supporting an expansive (and boundless) view of its jurisdiction. The circuit court rightly rejected those efforts and construed the two-word phrase "trust business" to mean exactly what it says: "a business involved with the administration of trusts." (R. p. 8.)

The Court of Appeals reversed the circuit court's plain-language reading and held that the agency's jurisdiction covers any company providing any fiduciary service anywhere in South Carolina, regardless of whether the provision of that service is at the appointment and direction of the Probate Court. Predictably, the Court of Appeals' decision created immediate turmoil across the Probate Court system, as the stream of vulnerable South Carolinians needing such fiduciary services never stops, but the Bank Board doesn't even have a way for companies other than Banks, Credit Unions, Savings Associations, and Savings Banks (none of which describes the Petitioners) to apply for "trust powers." State of South Carolina Board of Financial Institutions, *Applications Manual* at 6 ("Trust Powers"), *available at* Applications Manual 6.2.2025.pdf.[2]

Respectfully, the Court should grant certiorari review of this case and reverse the Court of Appeals' expansive construction of the phrase "trust business." The Court of Appeals' decision has severe consequences not only for the Petitioners and companies like them, but to the entire Probate Court system and to some of the state's most vulnerable citizens who count on the Petitioners to assist in their time of need. This case readily meets the Court's "special and important reasons" standard for issuing a writ of certiorari. Rule 242(b), SCACR.

At bottom, whether the Bank Board's jurisdiction should be expanded to cover any company that provides any fiduciary service, and not simply limited to companies engaged in "trust business," is a decision that only the General Assembly can make. The Court of Appeals' improper judicial expansion of the agency's authority should not stand.

[2] The agency's applications manual also recognizes that Section 34-21-10 applies to Banks or "Out-of-State Non-Depository Trust Companies," not to providers like Petitioners that do not provide trust services. *Application Manual* at 6–7. This all but concedes the overreach of the Court of Appeals' reading of the phrase "trust business" in Section 34-21-10.

STATEMENT OF THE CASE

The South Carolina Probate Code contains a comprehensive set of laws for administering and protecting the "affairs of decedents, missing persons, protected persons, minors, and incapacitated persons." S.C. Code Ann. § 62-1-102(b)(1). The General Assembly also established a specialized court—the Probate Court—to exercise "exclusive original jurisdiction over all subject matter" related to issues governed by the Probate Code. *Id.* § 62-1-302(a).

Probate courts have broad powers to appoint fiduciaries to assist and protect those persons who fall within their jurisdiction, including, for example, "guardians," *id.* § 62-1-201(15); "conservators," *id.* § 62-1-201(6); and "personal representatives," *id.* § 62-1-201(33). But often, the people needing the protections afforded by the Probate Code do not have a family member or friend available with the resources, skills, or even willingness to serve in a court-appointed fiduciary capacity.

The Petitioners—CDM Corporation, Inc., and Guardian Fiduciary Services, LLC—fill this critical gap. They provide a suite of fiduciary services to elderly, disabled, or otherwise compromised individuals of South Carolina: guardianship, conservatorship, personal representative, and power-of-attorney services. (R. p. 199; Mantell Aff. ¶ 4.) CDM and Guardian are often called when vulnerable individuals—including, for instance, a patient in a coma, a severely drug-addicted minor, or a mentally-ill person—have no one else to protect their interests. (R. p. 200; *id*. ¶¶ 8–9.) Nearly all of CDM and Guardian's clients are referred by licensed South Carolina attorneys, and the companies are then formally appointed to serve by judges of the South Carolina Probate Court. (R. p. 199; *id*. ¶ 5.)

Because of the critical role fiduciaries play under the Probate Code, South Carolina's probate judges routinely utilize companies like CDM and Guardian to serve as non-trustee

fiduciaries for "vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those persons whom have no relative or family member that is willing, capable or qualified to serve." (R. p. 211; Judge Carter Aff. ¶ 12.)

On October 26, 2020, the Bank Board filed this action in circuit court in Georgetown County, in which it sought a declaration that CDM and Guardian's non-trustee fiduciary services rendered them an "unlawful trust business," along with an injunction prohibiting them from "serving as conservator, guardian, attorney-in-fact in accordance with a power of attorney, personal representative or executor, and trustee of a trust, as well as holding themselves out as providing these services." (R. pp. 15–23; Compl. ¶¶ 24–39.)

The Petitioners counterclaimed, seeking a declaratory judgment that the statutory term "trust business" means exactly that—that is, a "business" involved in the administration of "trusts"—and that their service in other non-trustee fiduciary roles did not constitute "trust business" subject to the Board's authority. (R. pp. 24–35; Ans. & Countercl. ¶¶ 25–37).

On consent motion by the parties, Judge Culbertson referred the case to Judge Crosby, the Georgetown County Master-in-Equity, for resolution. (R. p. 1; Consent Order of Reference). On August 22, 2022, the parties filed competing motions for summary judgment. (R. pp. 42–181; Bank Board's Motion for Summary Judgment and Accompanying Exhibits; R. pp. 182–221; Petitioners' Motion for Summary Judgment and Accompanying Exhibits.)

The circuit court decided the motions without a hearing, finding that the statute means precisely what CDM and Guardian argued. The circuit court held that the term "trust business" regulated by the Bank Board must involve administration of a "trust," and that CDM and Guardian's service as guardian, conservator, personal representative, executor, or attorney-in-fact did not constitute a "trust business." (R. pp. 4–12.)

The circuit court's decision matched the Bank Board's historic understanding of its limited authority. (R. p. 200; Mantell Aff. ¶ 12.) It matched what the Attorney General historically advised the public and the agency itself. (R. p. 220; 1996 S.C. AG LEXIS 25, at *7 (Feb. 9, 1996).) And it matched the overall structure of Title 21 of the State Bank Code, which is aimed at regulating companies that invest in "common trust funds."

The Board sought reconsideration of the circuit court's decision on November 14, 2022. (R. p. 261; Motion for Partial Reconsideration.) The circuit court denied that motion on December 20, 2022. (R. p. 13; Order Denying Plaintiff's Motion for Partial Reconsideration.)

The Board timely appealed, and the Court of Appeals reversed in an unpublished opinion in which it held that "trust business" means "***all*** institutional fiduciaries fall within BOFI's regulatory authority." (Op. at 7 (emphasis supplied by the Court of Appeals).)

The Petitioners timely sought rehearing, while the Board sought to have the Court of Appeals publish its decision. The Court of Appeals denied both rehearing and the publication request on July 3, 2025. This petition follows.

ARGUMENT

I. The Court of Appeals improperly ignored the plain meaning of the statutory phrase "trust business" to expand the Bank Board's jurisdiction.

This case should begin and end with the plain language of the statute limiting the Bank Board's authority to regulate certain businesses. The South Carolina Banking Code provides that "[n]o corporation, partnership, or other person shall conduct a ***trust business*** in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board." S.C. Code Ann. § 34-21-10 (emphasis added).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey v. Hailey*, 404 S.C. 320, 324, 745 S.E.2d 81, 82 (2013). Where the statute's

language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and a court has no right to impose another meaning. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute").

This ironclad rule of law controls here. The circuit court held that the term "trust business" means exactly what these two words say: "a business involved with the administration of trusts." (R. p. 8.) This is what both the Bank Board and the Attorney General had always understood this term to mean. (R. pp. 200, 220.) The circuit court's ruling is unimpeachable based on the statute's own words, and it should have been readily affirmed.

Rather than engage in this simple, straightforward "plain language" analysis, the Court of Appeals deemed the circuit court's reading "colorable" but then rejected it after a tortured seven-page explanation that the phrase "trust business" must mean something far greater than "the business" of "trusts." (Op. at 5–11.)

Standing alone, the Court of Appeals' resort to numerous analytical tools to rewrite and expand the phrase "trust business" is error and should be reversed. *See City of Camden v. Brassell*, 326 S.C. 556, 560, 486 S.E.2d 492, 494–95 (Ct. App. 1997) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning."). That error is more evident when considered against standard rules of statutory construction.

II. Every norm of statutory construction rejects the Court of Appeals' expansion of the agency's jurisdiction.

After wrongly disregarding the plain-meaning rule in favor of other tools of statutory interpretation, the Court of Appeals overlooked and failed to account for the most basic norms of statutory construction, all of which reinforce the circuit court's reading of the law.

Usual and Customary Meaning. The General Assembly did not define the specific phrase "trust business" in the Bank Code. Where the Legislature does not define a statutory term, courts must interpret the term according to its "usual and customary meaning." *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994).

Here, the "usual and customary" definition of a "trust business" is a business involved with the administration of trusts, just as the circuit court held below; this is hornbook law. *See, e.g.*, 9 C.J.S. *Banks and Banking* § 650 ("It has been said that the primary and ordinary conception of a ***trust company*** is a corporation or institution organized to ***take and administer trusts***, rather than carry on the ordinary functions of banking.") (emphasis added); 1996 S.C. AG LEXIS 25, at *4–5 (Feb. 9, 1996) (surveying courts nationally that have reached this exact same understanding).

Cannot Add to a Statute. The statutory phrase controlling this case is "trust business." It is a simple two-word phrase that, as noted above, traditionally means being in the business of administering trusts. In rejecting this straightforward understanding of the term, the Court of Appeals held that this phrase is inclusive of "all" fiduciary roles. (Op. at 7.) In short, according to the Court of Appeals' decision, the word "trust" doesn't just mean "trust," but also includes personal representative ***and*** guardian ***and*** conservator ***and*** agent pursuant to a power of attorney ***and*** all other fiduciary roles.

Respectfully, a court has no authority to add to or alter the plain language of a statute. *See, e.g.*, *Ballard v. Newberry County*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021) ("We are not at liberty to add to the statutory law or subtract from it."). The General Assembly did not vest the Board with jurisdiction to govern "personal representatives" and "guardians" and "conservators" and "agents pursuant to a power of attorney" and "other fiduciary roles." Instead, it gave the Board limited authority to regulate companies who administer "trusts."

Inclusion of "Trusts" Means Exclusion of Other Types of Fiduciaries. As a corollary, if the General Assembly had intended to give the Board broad authority to regulate any entity that provides any possible fiduciary services, it certainly could have said so. In fact, it has legislated heavily regarding other types of fiduciaries throughout the State Code. *See, e.g.*, S.C. Code Ann. §§ 62-5-201 to -310, *id.* §§ 62-5-701 to -716 (addressing guardians); *id.* §§ 62-5-401 to –431 (addressing conservators); *id.* §§ 62-5-501 to –518 (addressing agents acting through a healthcare power of attorney). But the General Assembly did not identify any type of fiduciary beyond "trusts" when shaping the scope of the Board's authority.

When a statute specifically includes one item, courts construe the law to necessarily exclude all other items that the legislature did not include. *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed. 1999))).

The Legislature even wrote this principle directly into the Bank Code. South Carolina Code § 34-21-20 authorizes the Board to examine and regulate "trust companies, and fiduciary corporations authorized to conduct trust business." By listing separately (1) trust companies and (2) fiduciary corporations, the General Assembly explicitly recognized that not all "fiduciary corporations" are engaged in "trust business."

This confirms not only that fiduciary corporations may operate and engage in business other than "trust business," but also makes clear that the General Assembly only intended to grant the Bank Board regulatory authority over "trust companies" and fiduciary corporations engaged in "trust business"—not "***all*** institutional fiduciaries," irrespective of the fiduciary roles they actually perform, as the Court of Appeals held. (Op. at 7 (emphasis supplied by the Court of

Appeals).) Accordingly, the Court of Appeals' reading of "trust business" is not only inconsistent with the statute itself, but it actually manufactures a contradiction within the Bank Code. A judicial construction that creates an internal conflict within a statute cannot be allowed to stand.

Statute as a Whole. Instead of giving the words "trust business" their plain-language meaning, the Court of Appeals isolated the last sentence of Section 34-21-10 from the rest of the entire statutory scheme and placed disproportionate and out-of-context weight on that single sentence to give the phrase "trust business" an expansive construction. (Op. at 5–8.) That sentence says only that the statutory scheme regulating companies that invest in common trust funds and a statutory provision grandfathering in companies engaged in "trust business" as of January 1, 1972, do not somehow create an impediment for "a natural person or a national bank association having a principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." S.C. Code Ann. § 34-21-10.

The Court of Appeals' analysis runs contrary to several rules of statutory construction. First, words and phrases within a statute must not be finely sliced, but instead must be read "as a whole and in a manner consistent and in harmony with its purpose." *Smith v. S.C. Ins. Co*., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). But the Court of Appels did just that. It isolated the last sentence of Section 34-21-10 from (1) the rest of that same section, which limits the Board's authority to companies involved in a "trust business"; (2) the rest of Chapter 21, which makes clear that the Board's jurisdiction is designed to reach companies that invest in "common trust funds"; and (3) the rest of the South Carolina Code as a whole, which repeatedly distinguishes between "trustees" and all other types of fiduciaries.

Second, the Court of Appeals appeared to misunderstand the purpose of Section 34-21-10's final sentence. It was added through a 1972 amendment to Section 34-21-10, and it was not designed to expand the definition of "trust business" to all types of fiduciaries. Instead, this final sentence served to harmonize South Carolina law with the federal legislation passed before it, as Petitioners explained during oral argument before the Court of Appeals. The last sentence of Section 34-21-10 tracks the language of 12 U.S.C. § 92a, which provides that national banks have the same fiduciary authority allowed at the state and local level, which can include trustee, executor, administrator, guardian, and "any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act." 12 U.S.C. § 92a. The final sentence of Section 34-21-10 was never intended to expand the meaning of "trust business" or the Bank Board's jurisdiction; rather, it simply harmonizes state law with federal law to provide that nothing within Section 34-21-10 is intended to contradict 12 U.S.C. § 92a. And because this final sentence serves the function of melding state law with federal law, understanding this sentence in its proper context does not render it "surplusage," as the Court of Appeals incorrectly suggested. (Op. at 8.)

Third, the very sentence upon which the Court of Appeals based its analysis distinguishes "trustee" from all other types of fiduciary roles. But the only fiduciary role over which the General Assembly gave the Bank Board jurisdiction is for "trust business." As noted above, when a statute specifically includes one item, the statute necessarily excludes all other items that the Legislature did not include. *Hodges*, 341 S.C. at 86, 533 S.E.2d at 582. Likewise, when a statute uses only one word—here, "trust"—a court cannot rewrite the statute to add words—here, "any institutional fiduciary, whether serving as a trustee, personal representative, guardian, conservator, or agent" (Op. at 11). *Ballard*, 432 S.C. at 532, 854 S.E.2d at 851.

Fourth, the Court of Appeals looked to Article 3 within Chapter 21 to reinforce its conclusion, but that article fully supports the Petitioners' overarching point: the statute as a whole makes obvious that the Bank Board's regulatory authority over "trust business" is limited to companies who invest in "common trust funds." Common trust funds, as set forth in Article 3 (and its federal corollary at 26 U.S.C. § 584), are creatures of statute. The purpose of Article 3 is to regulate banks and "trust institutions" investing ***trust money*** in a ***common trust fund***—which has nothing to do with Petitioners or the fiduciary services they provide. In other words, the definitions within Article 3 are simply inapplicable to institutions, like the Petitioners, that do not invest trust money into a common trust fund.

* * * * *

The Court of Appeals' analysis of the phrase "trust business" improperly skips the plain-language analysis required by law in favor of a statutory construction that runs afoul of numerous principles of statutory construction—all of which confirm that the circuit court rightly held that this simple phrase means "a business involved with the administration of trusts." (R. p. 8.)

III. The Court of Appeals' decision improperly expands the Bank Board's jurisdiction without legislative authorization.

In addition to violating the foundational rule of law that statutes must be enforced as they are written and settled norms of statutory construction, the Court of Appeals' opinion violates another fundamental point: agencies are creatures of statute, and their power is limited by the General Assembly alone. By giving the Bank Board more authority than the Legislature allowed, the Court of Appeals has committed a core separation-of-powers violation that should be remedied by this Court.

It is settled law that an executive agency only has the powers the Legislature gives it through its delegating statute. *See, e.g.*, *Med. Soc'y v. MUSC*, 334 S.C. 270, 275, 513 S.E.2d 352,

355 (1999) (holding that the MUSC Board of Trustees did not have "the power to dispose of real or personal property" because "[a]n agency created by statute has only the authority granted it by the legislature," and there was no such authority expressly stated in the State Code). The Court is "bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003).

Here, the General Assembly granted the Board authority to regulate "trust business"—nothing more. The Court of Appeals nevertheless relied on (1) "a nationwide compact between states" onto which the Board signed in June 2018, which expansively defined "trust business" for purposes of that agreement; and (2) a self-serving, mid-litigation "Policy Statement" issued by the Board. (Op. at 4, 7.) But neither the Board's "Policy Statement" nor its decision to sign an agreement with other states—which does not appear to have been endorsed by the General Assembly—has any bearing on the powers delegated by the General Assembly to the agency.

First, the Board's so-called "Policy Statement" has no legal effect. The Board issued this statement during litigation before the circuit court, and it then relied upon the "Policy Statement" as if it was legal authority that binds the Judiciary. (R. p. 100; Board's "Policy Statement," cited on Pages 21–23 of the Board's Opening Appellate Brief.) As matter of law, as an agency cannot use the rulemaking process to alter—or, as here, expand—its statutory authority.[3] *See, e.g.*, *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 499, 685 S.E.2d 600, 608–09 (2009) (striking a regulation of the State Ethics Commission to the extent it was more restrictive than the statutes

[3] To be clear, the "Policy Statement" was not even promulgated as part of a rulemaking process under the Administrative Procedures Act. It was simply issued by the agency during litigation before the circuit court and then treated by the agency as if it should be given controlling authority. But as the authorities cited in the text make clear, even an actual regulation that is properly promulgated through the rulemaking process cannot alter or expand an agency's authority that is set by statute.

that governed what agency materials could be made public); *Soc'y of Prof'l Journalists v. Sexton*, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (striking as "invalid and repugnant to FOIA" a DHEC regulation that attempted to limit the class of persons who could obtain a death certificate and reiterating that "[a]mending FOIA to restrict the class of persons to whom DHEC must furnish death certificates is a legislative function," not something that can be done by an agency itself).

Moreover, the United States Supreme Court eliminated any possible relevance of this "Policy Statement" through its recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which struck notions of so-called "*Chevron* deference" owed to agencies from the litigation process. *See Colonial Pipeline Co. v. S.C. DOR*, 443 S.C. 448, 458–59, 905 S.E.2d 129, 134–35 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024) ("We are cognizant of the recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled precedent requiring a reviewing court "to defer to 'permissible' agency [interpretations of the statutes those agencies administered,]" even when a reviewing court might read the statute differently, if "'the statute [was] silent or ambiguous with respect to the specific issue' at hand.").

Second, a compact entered by the Board alone has zero impact on its scope of authority and regulatory power. Justice Kittredge was clear in his warning against this exact type of agency-led jurisdictional expansion: "In South Carolina, to preserve some semblance of the separation of powers we once held sacred, an administrative agency may not make law without legislative oversight and approval." *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). He further observed: "'[S]urely one thing no agency can do is apply the wrong law to citizens who come before it, especially when the right law would appear to support the citizen and not the agency. . . . An agency decision . . . that loses track of its own

controlling regulations and applies the wrong rules in order to penalize private citizens can never stand." *Id*. at 461, 790 S.E.2d at 776 (quoting *Caring Hearts Pers. Home Servs., Inc. v. Burwell,* 824 F.3d 968, 977 (10th Cir. 2016)) (cleaned up).

So, too, here. The Bank Board's out-of-court conduct to expand its own jurisdiction appears to have prompted the Court of Appeals to endorse an expansive view of the agency's authority that far exceeds the "trust business"-only limitation placed on it by the General Assembly. (*See* Op. at 11 ("Based on the foregoing, the term 'trust business' necessarily encompasses fiduciary services provided by not only the trustee of a trust but also a personal representative, conservator, guardian, or agent.").) By improperly expanding the Board's jurisdiction through the Judiciary and outside the legislative process, the Court of Appeals' decision is inconsistent with basic separation of powers and is the exact "fourth branch of government" overreach Justice Kittredge warned against in *Joseph*. The Court should review and vacate the ruling accordingly.

IV. The Court of Appeals' decision unjustifiably upsets the current regulatory structure in place and leaves vulnerable South Carolinians at risk.

The Court of Appeals concluded its decision by explaining that all fiduciaries should be regulated by Bank Board, even if the Probate Court is involved with the fiduciary's appointment. In so doing, the Court of Appeal dismantled a key tool of the Probate Court to appoint fiduciary companies to serve South Carolinians in need, and it enjoined that court from utilizing companies like the Petitioners to serve as non-trustee fiduciaries to vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those with no relative or family member that is willing, capable or qualified to serve.

Instead, to serve in "any" fiduciary role, a fiduciary company would need to make a written application (including a $15,000 application fee), receive written approval from the Bank Board, and then pay an annual $19,000 "supervisory fee." To justify this shift, the Board argued, and the

Court of Appeals agreed, that in the absence of the Bank Board's constant oversight and regulation, there is no other source of oversight of non-trustee fiduciaries. This is wrong for several reasons.

First, it is simply inaccurate to suggest that fiduciary companies like the Petitioners, or anyone else performing fiduciary services unrelated to trusts, can slip through the cracks, unregulated. When the Probate Court appoints a person or company to serve as a guardian, or a conservator, or a personal representative, it retains jurisdiction over that appointee and has full authority to monitor and penalize the appointee should it breach its fiduciary responsibilities. *See* S.C. Code Ann. § 62-1-112 ("The inherent power of the court to impose penalties for contempt extends to all filing requirements, proceedings, judgments, and orders of the court.").[4] Moreover, the common law recognizes a private cause of action for breaching a fiduciary duty. *See generally Bennett v. Estate of King*, 436 S.C. 614, 626–27, 875 S.E.2d 46, 52–53 (2022) (analyzing a claim for breach of fiduciary duty that arose in the context of a personal representative's conduct after being appointed by the Probate Court, and listing numerous cases where a breach had been affirmed).

But more importantly, this decision reopens a critical gap, leaving South Carolinians in need of help, but with no one willing or able to provide it. The Court of Appeals' expansive definition of "trust business" forecloses fiduciary companies' ability to serve as a fiduciary unless approved by and under the supervision of the Board—a state agency that is unqualified and unequipped to regulate the fiduciary services provided by non-trustee fiduciary companies. As noted in the Introduction, the Bank Board ***doesn't even have an option for non-trustee fiduciary***

[4] To be clear, the Petitioners do not contend that the Board and the Probate Court can never have concurrent oversight. Whether the Board and the Probate Court can have concurrent jurisdiction over non-trustee fiduciaries is a decision is for the Legislature to make, but there is no basis for judicially expanding the Board's regulatory power beyond "trust businesses" investing in a "common trust fund," as currently provided by the General Assembly

companies to apply to be a "trust business." The Board's "Applications Manual"—which was last updated on June 2, 2025, after the Court of Appeals issued its opinion—says that only Banks, Credit Unions, Savings Associations, and Savings Banks can apply for "trust powers." *Applications Manual* at 6 ("Trust Powers"), *available at* Applications Manual 6.2.2025.pdf. The Application Manual further recognizes that Section 34-21-10 applies to Banks or "Out-of-State Non-Depository Trust Companies," not to companies that do not provide trust services. *Id.* at 6–7.

In the agency's own words: "The mission of the Board of Financial Institutions is to protect the citizens of South Carolina by preserving a sound financial industry through effective and efficient regulatory oversight of ***financial institutions*** in order to strengthen consumer confidence, assure reliable access to ***financial services***, and encourage economic growth." Board of Financial Institutions Mission Statement (emphasis added). This mission has nothing to do with helping wards, or the vulnerable, or the incapacitated, but the Board's jurisdictional overreach and the Court of Appeals' opinion endorsing it handicaps the Probate Court's ability to serve those citizens who most desperately need the services that Petitioners and companies like them provide.

Simply put, the Board of Financial Institutions is just that—an agency charged with regulating ***financial institutions***. It has no expertise on matters concerning the health and wellbeing of vulnerable or incapacitated South Carolina citizens, and the Court of Appeals' order giving the agency that authority (and handicapping the Probate Court's ability to address such issues) should be reviewed by this Court and vacated.

CONCLUSION

The General Assembly vested the Bank Board with narrow regulatory authority over companies engaged in "trust business." The Petitioners are not engaged in "trust business." They provide fiduciary services to elderly, disabled, or otherwise compromised individuals of South

Carolina to ensure their physical, emotional, and medical needs are protected, specifically in situations where there is no one else to serve in that role (issues about which the Bank Board has absolutely no expertise or experience).

There is no doubt the General Assembly repeatedly distinguishes between "trusts" and other types of fiduciaries: it lists different non-trustee fiduciaries in Section 34-21-10; it acknowledges that some "fiduciary corporations" are not engaged in "trust business" in Section 34-21-20; and it specifically carves all other types of fiduciaries out of the definition of "trust" elsewhere in state law, such as Section 62-1-201(49). Had the General Assembly wished for the Bank Board to regulate all companies providing fiduciary services, it would have announced that intention by giving the Bank Board authority over all fiduciaries, not just those engaged in "trust business." But it didn't, and the Court of Appeals erred when it construed the phrase "trust business" far beyond its plain meaning to include "all institutional fiduciaries."

For the reasons set forth above, the Petitioners respectfully request the Court grant this petition, vacate the Court of Appeals' decision, and issue an order reinstating the circuit court's straightforward, plain-language construction of the phrase "trust business."

Signature Page Attached

Respectfully submitted,

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August 4, 2025

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Aug 28 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Court of Appeals Opinion 2025-UP-169 (Filed May 28, 2025)

Supreme Court Case No. 2025-001557

South Carolina Board of Financial Institutions, …….. Respondent,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Petitioners.

RETURN TO PETITION FOR WRIT OF CERTIORARI

August 28, 2025

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INTRODUCTION

Respondent South Carolina Board of Financial Institutions ("BOFI") responds to the Petition for Writ of Certiorari filed August 4, 2025, by Petitioners CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("GFS") (collectively, "Petitioners"), challenging the Court of Appeals's unanimous holding that Petitioners conducted unlicensed trust business, in violation of S.C. Code Ann. § 34-21-10, by serving as trustee, conservator, guardian, personal representative, and agent, without BOFI's approval. The court rejected Petitioners' assertion that BOFI may only regulate entities serving as "trustee" and not "non-trustee fiduciary" roles, as this contradicts the plain language of Section 34-21-10 and numerous other statutes.

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The Court may grant review for a number of reasons, including but not limited to those (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and, (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Id.

There is no "special and important" reason to review this case further. There was no dissent within the Court of Appeals. The court's opinion, while thoroughly reasoned and worthy of publication, was not published and has no precedential value beyond the present case. And, to the extent Petitioner has raised any novel or meaningful questions, the Court of Appeals correctly and thoughtfully answered them. Therefore, BOFI respectfully requests that the Court deny the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals correctly hold that Petitioners were conducting unlicensed trust business, in violation of S.C. Code Ann. § 34-21-10, by serving as personal representative, guardian, conservator, and agent?

COUNTER-STATEMENT OF THE CASE

The Board of Financial Institutions refers to both an agency of the State of South Carolina ("Agency"), and its board ("Board") (collectively "BOFI"). By law, the Board is composed of eleven members, ten of whom must be actively engaged in financial industry, and one who is unaffiliated and serves "as a representative of the consumers of the State." S.C. Code Ann. § 34-1-20. Each Board member is obligated to represent the best interests of the public. Id.

Prior to 1911, "The theory of the common law was that a corporation could not be thus appointed [as executor of a will] because it could not take the oath necessary in qualifying." Ex Parte Michie, 167 S.C. 1, 165 S.E. 359, 366 (1932) (dicta). In 1911, the General Assembly passed legislation which would ultimately become S.C. Code Ann. § 34-15-10, allowing a corporation to be appointed "under the same circumstances, in the same manner, and subject to the same control by the Court having jurisdiction of the same as a legally qualified person." Id (quoting 1932 S.C. Civil Code § 7864). The Supreme Court recounts that "The lawmakers, when they granted them power to become executors, administrators, guardians, and trustees, must have realized that they were creating for them a different status in the law than that of an individual executor, but had faith in their fidelity and the security of the funds intrusted [*sic*] to them." Id at 368. Unfortunately, "The epidemic of bank failures which followed in the years preceding 1930 showed them the fallacy of their faith and induced the passage of the act of 1930, which accurately defines the duties of such fiduciaries in the handling of trust funds." Id at 367.

Among other things, this 1930 act of the General Assembly undertook "to subject corporate fiduciaries to examination" by the State Board of Bank Control, BOFI's predecessor. Id at 367. These statutes evolved into the present law, codified at S.C. Code Ann. § 34-21-10, *et seq.*

Thus, for nearly 100 years, the South Carolina Board of Financial Institutions and its predecessors have licensed and regulated entities serving as trustee, conservator, guardian, personal representative, and agent—i.e. trust business.

Pursuant to S.C. Code Ann. § 34-21-10, before a non-exempt entity[1] conducts trust business in South Carolina, it must seek and obtain prior written approval from the Board. An entity initiates the Board's review by submitting a completed Trust Company Application, which has at all times relevant to this action, been publicly available in the "Applications and Forms" section of BOFI's website. See https://banking.sc.gov/industry-information/applications-and-forms. On page 1, Section I of the Trust Company Application, the entity trust company applicant must declare the "trust powers to be exercised" by selecting from a list which includes "Trustee," "Executor or Administrator," "Conservator," "Guardian," "Agent," among other options. Id.

Once an entity's application to conduct trust business is approved by the Board in writing, it remains subject to regular examinations by BOFI. S.C. Code Ann. § 34-21-20.

Petitioner CDM is a domestic corporation located in Georgetown, South Carolina, co-owned by Stephen Mantell and his wife, Candida Mantell. Petitioner GFS is a domestic limited liability company with Mr. Mantell as the sole member, also located in Georgetown. Utilizing the names and corporate veils of both CDM and FGS as well as "Senior Helpers," Petitioners admit to seeking and accepting appointments to serve as trustee, conservator, guardian, personal

[1] By statute, BOFI does not license or regulate individuals or "natural persons" serving in fiduciary roles. Natural persons are free to accept fiduciary appointments without any licensure or oversight from BOFI.

representative, and agent pursuant to a power of attorney for numerous individuals, in multiple counties, and before multiple probate judges.[2]

Despite conducting this extensive trust business, Petitioners have never made a written application to the Board to conduct a trust business in South Carolina, nor did they receive written permission from the Board to conduct a trust business in South Carolina. **(R. pp. 161-163)** (Def. Resp. to Pl. Req. to Admit). Petitioners' sole contact with BOFI was, according to Mantell's self-serving and unverified statement, a legally ineffectual telephone discussion in 2011 with a BOFI staff member—not the Board—in which Mantell claims his businesses were absolved of any licensure requirements or regulatory oversight because "my companies were not actively managing investments." **(R. p. 203)** (Affidavit of Stephen Mantell, ¶ 12). BOFI has no record of this conversation, nor is there any evidence suggesting that the "management of investments" was ever a consideration in whether BOFI's approval was required pursuant to Section 34-21-10.[3]

Thus, BOFI initiated an action in Circuit Court in Georgetown County on October 26, 2020, alleging that Petitioners were conducting unauthorized trust business in violation of S.C. Code Ann. § 34-21-10, *et seq*. **(R. pp. 15-23)** (Complaint). The case was referred to Hon. Joe M. Crosby, Master-in-Equity for Georgetown County, on March 11, 2022. **(R. pp. 1-3)** (Order of Reference). The parties filed opposing Motions for Summary Judgment. **(R. pp. 77-221)** (Motions for Summary Judgment).

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[2] CDM served as conservator, guardian, personal representative, and power of attorney for individuals in South Carolina. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit). GFS served as guardian in South Carolina. Id. Both Petitioners hold themselves out to the public as providing the services of conservator, guardian, personal representative of an estate, and power of attorney. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit).

[3] Petitioners' contention that BOFI claimed to regulate only those business involved in the "management of investments" seems unlikely, considering that the Financial Industry Regulatory Authority ("FINRA") licenses and examines individuals and firms dealing in investments.

The Master-in-Equity's Order permanently enjoined Petitioners from serving as a trustee of a trust; however, the Master-in-Equity declined to enjoin Respondents from serving as conservator, guardian, personal representative, and agent. **(R. pp. 4-12)** (Summary Judgment Order). The Master-in-Equity held that the "trust business" regulated by BOFI must involve a "trust," and that Petitioners' serving as conservator, guardian, personal representative, or agent did not constitute "trust business," and did not require BOFI's prior written approval. Id. The Master-in-Equity further held that Petitioners' "non-trustee fiduciary" roles are regulated by the probate courts and, therefore, BOFI cannot regulate entities serving in these capacities. Id.

BOFI timely appealed the matter to the Court of Appeals, challenging the Master's narrow rendering of "trust business," and its finding that the probate courts regulate conservator, guardian, personal representative, or agent to the exclusion of BOFI's oversight.

In a thoroughly reasoned 15-page opinion, the Court of Appeals agreed with BOFI on both points, concluding "[W]e reverse the master's conclusions that the term 'trust business' excludes the services of personal representatives, conservators, guardians, and agents and that these roles are outside BOFI's regulatory jurisdiction." (Op. at 15). The court also observed that, regardless of the meaning of trust business as used in Section 34-21-10, Petitioners' fiduciary activities are plainly subject to BOFI's regulation: "[S]ection 34-21-20 clearly governs organizations like Respondents: "All state chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by [BOFI] and are further subject to rules and regulations promulgated by [BOFI]." (Op. at 10).

Petitioners now seek the review of the Supreme Court. BOFI opposes on the following grounds.

ARGUMENT

I. PETITIONERS' DISAGREEMENTS WITH THE LAW, OBJECTIONS TO INEFFECTUAL DICTA, AND BASELESS FACTUAL ACCUATIONS DO NOT MERIT THIS COURT'S INTERVENTION.

Petitioners' arguments— beginning with the crude characterization of the Court of Appeals analysis as "tortured" (p. 7), and concluding with the baseless, ad hominem accusation that BOFI is "unqualified and unequipped to regulate" trust business (p. 16)— do not compose a genuine challenge to the interpretation of the law meriting this Court's involvement.

Petitioners' claims of broad, harmful changes to the State's regulatory landscape are unfounded. For one thing, nothing has changed: the Court of Appeals applied the law at is has been interpreted for nearly 100 years. See Ex Parte Michie, 167 S.C. 1, 165 S.E. 359, 366 (1932).

Regardless, the Order was not published and— by rule and according to its own declarative heading— it "has no precedential value." (Op. at 1). Thus, even if this Court disagrees with the conclusion that "all institutional fiduciaries fall within BOFI's regulatory authority," that language is ineffectual. The application of the appellate Order is limited to Petitioners, and the practical effect of the appellate decision is narrow and explicit: "we remand to the master to enjoin [Petitioners'] services as a personal representative, conservator, guardian, or agent without first complying with section 34-21-10." (Op. at. 15). As discussed more fully herein, the statute leaves no doubt that these fiduciary roles constitute BOFI-regulated trust business.

Additionally, Petitioners' objections to BOFI's regulation of corporate fiduciaries are "couched in terms of the absurdity of any other interpretation in light of the special circumstances of [Petitioners'] particular businesses. [Petitioners] seem particularly concerned about the amounts of BOFI's application fee and annual supervisory fee." (Op. at 6).

Petitioners reiterate these arguments in their request for this Court's review, along with making inaccurate factual assertions intended to discredit BOFI rather than make a meaningful

challenge to the Opinion. Petitioners repeatedly declare – in bold and italics— that BOFI "doesn't even have a way for companies other than Banks, Credit Unions, Savings Associations, and Savings Banks… to apply for 'trust powers.'" (Petition, pp. 3, 17). This is demonstrably false: BOFI's Trust Company Application is publicly available on BOFI's website. See https://banking.sc.gov/industry-information/applications-and-forms. Petitioners also claim that "the Bank Board confirmed to the Petitioners' principal that their provision of these fiduciary services did not amount to a 'trust business' subject to the agency's jurisdiction." (Petition, p. 2). Yet, even according to Mantell's own self-serving affidavit, his conversation was with a BOFI staffer—not the Board. **(R. p. 203)** (Affidavit of Stephen Mantell, ¶ 12).

Ultimately, Petitioners' claims do not merit further review by this Court.

II. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONERS CONDUCTED UNLICENSED TRUST BUSINESS BY SERVING AS CONSERVATOR, GUARDIAN, PERSONAL REPRESENTATIVE, AND AGENT, IN VIOLATION OF S.C. CODE ANN. § 34-21-10, ET SEQ.

The Court of Appeals correctly held that Section 34-21-10 prohibits Petitioners from serving as conservator, guardian, personal representative, or agent without the Board's prior written approval because these activities constitute trust business. The Opinion supports this conclusion on every front, and rather than re-hash the appellate arguments, BOFI defers to the clear, thorough, and accurate analysis in the Opinion.

a. The plain language of Section 34-21-10 makes it clear that trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals accurately concluded that the plain language of Section 34-21-10 indicates that BOFI-regulated trust business includes personal representative, conservator, guardian, and agent: "the inclusion of 'executor, administrator, guardian, committee or in any other fiduciary capacity' in the exceptions to the requirement for trust business licensure in section 34-21-10 shows that these activities would otherwise constitute a trust business if not undertaken by

an exempt person, and to view this otherwise would render this final clause of section 34-21-10 surplusage or superfluous." (Op. at 8).

b. The context of Section 34-21-10 and other provisions throughout Title 34 further confirm that trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals provides further assurance of its conclusion by analyzing the context of trust business throughout Title 34: "As to the context in which section 34-21-10 appears, there are numerous sections within the same general statutory law that show the legislature's intent to include personal representatives, conservators, guardians, and agents within the term 'trust business.'" (Op. at 9).

c. The usual and customary meaning of trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals acknowledges that, to the extent that the "trust business" in Section 34-21-10 is ambiguous, the usual and customary meaning of "trust business" includes personal representative, conservator, guardian, and agent: "The usual and customary meaning of the term 'trust' is recognized in secondary sources of law as including a range of fiduciary relationships. 'A trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word 'trust' also is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts.'" (Op. at 7) quoting 90 C.J.S. Trusts § 1 (December 2024 update).

Petitioners have failed to make any argument that undermines the court's analysis; as such, this Court should not allow Petitioners to proceed.

III. PETITIONERS' ARGUMENTS REGARDING THE BOARD'S POLICY STATEMENT ARE MOOT BECAUSE THE COURT OF APPEALS DID NOT GIVE DEFERENCE TO, OR EVEN CONSIDER IT IN THE ANALYSIS OF THIS CASE.

Petitioners raise extensive objections to the Board's "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina," repeatedly emphasizing a concurring opinion by Justice Kittredge stating that "an administrative agency may not make law without legislative oversight and approval." Joseph v. S.C. LLR, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). BOFI is in full agreement with this sentiment, and has never argued that the Policy Statement should be treated as law; however, Petitioners protests are moot in light of the fact that the Court of Appeals did not rely on or give deference to, or even consider the Policy Statement in its analysis.

The sole acknowledgement of BOFI's Policy Statement occurs in the "Facts/Procedural History" section of the Opinion:

> After the case was referred to the master, but before the parties filed cross-motions for summary judgment, BOFI unanimously adopted a policy statement "affirm[ing] BOFI's longstanding industry and regulatory interpretation of the phrase 'trust business' as used in S.C. Code Ann. § 34-21-10." The policy statement asserted that BOFI interprets the phrase "conduct a trust business" as used in section 34-21-10 to include serving as a personal representative of a decedent's estate, a guardian, a conservator, or an agent pursuant to a power of attorney.

(Op. at 2). Following these two sentences, the Policy Statement is not mentioned again.

Thus, Petitioners objections to the Board's issuance of the Policy Statement do not constitute grounds for this Court to review the well-founded decision of the Court of Appeals.

CONCLUSION

For the foregoing reasons, BOFI respectfully asks this Court to deny the Petition for Writ of Certiorari.

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2025-001557
Court of Appeals Opinion 2025-UP-169

South Carolina Board of Financial Institutions ..... Respondent,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Petitioners.

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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September 8, 2025

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

In seeking certiorari review, the Petitioners explained that the Court of Appeals has taken the two-word phrase "trust business" in South Carolina Code § 34-21-10 and vastly expanded the jurisdiction of the Bank Board beyond the narrow authority assigned by the General Assembly to cover every type of fiduciary role imaginable under South Carolina law, irrespective of whether a trust is involved. That interpretation is contrary to the statute's plain language, the historical understanding of the statute, and every rule of statutory interpretation that could be in play. And the result is to abandon some of South Carolina's most vulnerable citizens without the help that the Probate Court has tasked Petitioners with providing.

In opposing the certiorari request, the Bank Board provides no analysis of the statute itself, nor does it identify a single case or rule of statutory interpretation that supports the Court of Appeals' ruling. Instead, the agency parrots the lower court's decision and then puts forward three arguments to avoid further judicial review: (1) claiming that the Court of Appeals' reading of the law is the same as it has been "for nearly 100 years" (Return at 3–7); (2) arguing that this Court shouldn't care about this case because the Court of Appeals' order is "not published and has no precedential value beyond the present case" (*id.* at 1, 7); and (3) distancing itself from the agency's own pre- and mid-litigation efforts to expand its jurisdiction (*id.* at 10).

These arguments only highlight the need for this Court's intervention. Left unchecked, the Court of Appeals' decision both expands the Bank Board's authority beyond the limited boundaries set by the Legislature, and it removes from the Probate Court's toolbox an essential tool on which that court counts to help South Carolina's most vulnerable citizens when they come before the Probate Court needing help.

ARGUMENT

I. The Bank Board's historical discussion reinforces its absence of jurisdiction over the Petitioners and other non-trustee fiduciaries.

The Bank Board spends the bulk of its Return discussing the agency's history, implying that the Bank Board has always regulated non-trustee fiduciaries and arguing that the Court of Appeals' ruling is consistent with a century of jurisprudence. (Return at 3–7.) The agency cites a single case in support of its argument—*Ex Parte* Michie, 167 S.C. 1, 165 S.E. 359 (1932)—but that case actually underscores the error of the Court of Appeals' decision.

In *Michie*, this Court held that a dissolved bank that had been the executor of a will owed an estate's administrator only the pro rata sum of funds that remained with the bank when it closed, rejecting an argument that the estate had a priority claim over the bank's general creditors. *Id.* at 35, 165 S.E. at 370.

That holding does not directly control any issue in this case, but the *Michie* Court discussed the impetus for legislation passed in 1930 to which the Bank Board now points: "[A]s conditions grew worse and bank failures became a thing of daily occurrence, they [*i.e.*, the General Assembly] undertook to lock the door after the horse had been stolen; they passed the Act of 1930." *Id.* at 25–26, 165 S.E. at 367.

The "Act of 1930" referenced in *Michie* was passed in response to serial bank failures, but it did not empower a state agency to regulate all non-trustee fiduciaries. Instead, as the *Michie* Court itself recited, the Legislature's solution to the banking crisis was to provide that "[a]ll State ***banks***, ***trust companies***, and fiduciary corporations ***doing a trust business***, shall be subject to examination by the State banking department." *Id.* at 24, 165 S.E. at 366 (quoting 1930 S.C. Acts No. 821, § 1) (emphasis added). This legislative recognition that not all fiduciary corporations are "doing a trust business" remains codified today at South Carolina Code § 34-21-20.

Thus, "for nearly 100 years," the General Assembly has recognized that there are some "fiduciary corporations" that are "doing a trust business," while others (like the Petitioners) are not. Only the former fall within the jurisdiction of the Bank Board, as a matter of both the plain language of the State Code and historical fact.

As discussed in the certiorari petition, this straightforward understanding of the law—that the Bank Board's regulatory authority only reaches companies that manage trusts—is consistent with how the Attorney General previously advised the public. (R. p. 220.) It is consistent with how the agency previously advised the Petitioners. (R. p. 200.)[1] It is consistent with the circuit court's plain-language reading of South Carolina Code § 34-21-10. (R. p. 8.) And it is consistent with the Bank Board's continued representations to the public that only Banks, Credit Unions, Savings Associations, and Savings Banks—none of which include the Petitioners—must apply for "trust powers." *See generally Applications Manual* at 6 ("Trust Powers"), *available at* https://banking.sc.gov/sites/banking/files/Documents/Applications%20Manual/Applications%20Manual%206.2.2025.pdf.[2] The Court of Appeals' ruling to the contrary should be reversed.

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[1] The Bank Board attempts to discredit Mr. Mantell's unrebutted, sworn affidavit by pretending that these conversations were with an anonymous "BOFI staffer." (Return at 5, 8.) Hardly. As Mr. Mantell detailed in his affidavit, these conversations were with Banking Commissioner Louie Jacobs—the very same Banking Commissioner to whom the Attorney General addressed the advisory opinion explaining that "trust business" means administering trusts. (*Compare* R. p. 200 (Mantell affidavit recounting multiple conversations with "Banking Commissioner Louie Jacobs"), *with* R. p. 219 (Attorney General's Opinion addressed to "The Honorable Louie A. Jacobs, Commissioner of Banking").)

Even more puzzling is the Bank Board's suggestion that FINRA—a private, members-regulating-each-other organization—somehow has exclusive jurisdiction to govern entities that manage investments. (Return at 5 n.3.) The entire point of South Carolina Code §§ 34-21-10 *et seq.* is to give the Bank Board authority to govern entities that manage investments in common trust funds—which does not include the Petitioners.

[2] The Bank Board rebuts this by pointing out that an application for trust powers is available on the agency's website. (Return at 8.) This response also misses the point; the agency's own Applications Manual identifies the entities who actually need to complete that application, and it

II. The Court of Appeals' ruling has a direct adverse impact on numerous South Carolinians who count on the Petitioners.

The Bank Board next encourages the Court to reject certiorari review because the Court of Appeals' opinion was unpublished. In so doing, the agency practically concedes that the Court of Appeals' decision wrongly expands the agency's jurisdiction beyond its statutory boundaries, but it asks the Court to brush aside that legal error because, in theory, the ruling only attaches to the Petitioners and only applies to this case:

> Thus, even if this Court disagrees with the [Court of Appeals'] conclusion that "all institutional fiduciaries fall within BOFI's regulatory authority," that language is ineffectual. The application of the appellate Order is limited to Petitioners, and the practical effect of the appellate decision is narrow and explicit: "we remand to the master to enjoin Petitioners' services as a personal representative, conservator, guardian, or agent without first complying with section 34-21-10."

(Return at 7 (quoting Op. at 7, 15) (cleaned up).)[3]

This is a remarkable position for an agency to take. Administrative agencies only have the authority given to them by the Legislature. *Med. Soc'y v. MUSC*, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999). The agency cannot seriously expect the public at large—or, specifically, other non-trustee fiduciaries and the probate attorneys and probate judges who engage them to help vulnerable South Carolinians in need—to take comfort in the fact that an unlawful expansion of the agency's jurisdiction happened in an unpublished opinion.

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identifies only Banks, Credit Unions, Savings Associations, and Savings Banks as entities yhat need to apply for such "trust powers." The Petitioners are none of these things, and the agency's own manual corroborates that the Petitioners are beyond the Bank Board's jurisdiction.

[3] Notably, in reciting which of the Petitioners' fiduciary services should be enjoined, the Court of Appeals did not mention "trustee"—the only fiduciary role that the General Assembly actually assigned to the Bank Board in South Carolina Code § 34-21-10, which is a fiduciary service that the Petitioners' do not provide. The mismatch between the Court of Appeals' instructions to the circuit court and the plain language of Section 34-21-10 makes the error of its analysis unmistakable.

Moreover, this issue is not merely a philosophical question of agency overreach, but will practically impact numerous vulnerable South Carolinians who, prior to the Court of Appeals' opinion, were readily cared for by the Petitioners. Although the Bank Board argues that the unpublished decision "is limited to Petitioners," the practical effect is that the decision reaches all South Carolinians for whom the Petitioners are currently providing fiduciary services. These individuals are vulnerable or incapacitated citizens in need of fiduciary services to assist with decisions concerning their health, safety, and wellbeing. Despite the Bank Board's flippant contention that the Court of Appeals' unpublished decision impacts the Petitioners alone, that ruling will certainly negatively impact the numerous South Carolinians who will be stripped of their fiduciary services and care if that decision is allowed to stand.

Consider Ms. Gloria Ormand-Ward.

Ms. Ormand-Ward lives in Horry County. She is in her early 80s. She is not married, and her closest family member is a cousin who lives in Seattle.

In July 2021, Ms. Ormand-Ward was diagnosed with progressive vascular dementia and permanent bipolar mood disorder. Judge Beverly of the Horry County Probate Court deemed her to be "incapacitated" and unable to make decisions essential to her physical safety and wellbeing.[4]

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[4] A copy of the Probate Court's order is attached for the Court's reference as Exhibit A. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (explaining that, even in a Rule 12(b) context, a court "may properly take judicial notice of matters of public record").

The copy of the appointment order that is attached to this Reply was pulled from the Record on Appeal in Appellate Case No. 2023-000239, a matter pending before the Court of Appeals, as discussed in the text. Coincidentally, a panel of the Court of Appeals heard argument in that case on February 11, 2025—the day before a different panel heard oral argument in this case. As of the date of this filing, the Petitioners' case on behalf of Ms. Ormand-Ward remains pending before the Court of Appeals.

The Probate Court further became aware that shortly before Ms. Ormand-Ward's diagnosis, she "may have been the victim of an unauthorized transfer of assets and/or exploitation of her financial resources" through an allegedly-fraudulent transfer of her home in Myrtle Beach through a warranty deed to a business named "Homedebone LLC." (Ex. A, Ormand-Ward Probate Order at 3–4.)

Accordingly, the Probate Court appointed "CDM Corporation [one of the Petitioners], by and through its representative, Stephen Mantell" to serve as a guardian and conservator for Ms. Ormand-Ward. (*Id.* at 8.) The appointment order addressed various aspects of Ms. Ormand-Ward's daily activities, and it directed CDM as a fiduciary to be responsible for managing all of the "removed" decisions on behalf of Ms. Ormand-Ward:

> **IT IS HEREBY ORDERED** that a guardianship and conservatorship are appropriate given the evidence presented, and Gloria Ormand-Ward is incapacitated to the extent that she can/cannot exercise the following rights pursuant to S.C. Code Ann. § 62-5-304(A) and § 62-5-404(B):

Remove	Retain	Other	
☒	☐	☐	1. Marry or divorce
☒	☐	☐	2. Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement
☒	☐	☐	3. Travel without the consent of the proposed Guardian
☒	☐	☐	4. Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies
☒	☐	☐	5. Make end-of-life decisions including, but not limited to, a 'do not resuscitate' order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration
☒	☐	☐	6. Consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment
☒	☐	☐	7. Authorize disclosures of confidential information
☒	☐	☐	8. Operate a vehicle
☒	☐	☐	9. Vote
☒	☐	☐	10. Be employed without the consent of the proposed Guardian
☐	☒	☐	11. Consent to or refuse educational services
☐	☒	☐	12. Participate in social, religious or political activities
☒	☐	☐	13. Buy, sell, or transfer real or personal property or transact business of any type
☒	☐	☐	14. Make, modify, or terminate contracts
☒	☐	☐	15. Bring or defend any action at law or equity

(*Id.* at 7.)

As part of the Petitioners' work on behalf of Ms. Ormand-Ward, CDM instituted litigation to reclaim her property that was allegedly deeded to "Homedebone LLC." A portion of that case is presently pending before the Court of Appeals in a case captioned *Gloria Ormand-Ward, by and through her Guardian and Conservator, CDM Corporation, through its representative, Stephen Mantell v. Litt et al.*, Appellate Case No.2023-000239. At bottom, as part of their fiduciary services, the Petitioners are zealously advocating for Ms. Ormand-Ward and looking after her wellbeing.

Ms. Ormand-Ward is one of hundreds of South Carolinians who the Petitioners have served through the years, and her case raises two major points in response to the Bank Board's argument. First, there are very real consequences to the Court of Appeals' decision, unpublished or not. As it stands, Ms. Ormand-Ward—and numerous other vulnerable South Carolinians just like her—counts on the Petitioners to look out for her health, safety, and wellbeing, precisely as the Probate Court ordered. It is simply untrue to argue, as the agency does, that allowing the Court of Appeals' decision to stand will not impact anyone beyond the Petitioners.

Second, no one would genuinely suggest that the General Assembly intended for the Bank Board to regulate the various responsibilities outlined in the Probate Court's "Remove/Retain" list. The agency claims that it is a "baseless, ad hominem accusation" to argue that the Bank Board is "unqualified and unequipped to regulate" these activities. (Return at 7.) But this is in no way an "ad hominem" attack—it is simply a realization that the Bank Board exists to "supervise all banks and building and loan associations," not guardians or conservators. S.C. Code Ann. § 34-1-60.

What input could the Bank Board possibly have as to whether Ms. Ormand-Ward (or any other vulnerable South Carolinian) should be allowed to marry? Or where she should live? Or whether she can travel? Or about her medical decisions? Or whether she should be allowed to drive? Or whether she should be allowed to vote? Or whether she should be allowed to hold a job?

These are issues that the General Assembly committed to the Probate Court's ongoing supervision. The Court of Appeals erred when it construed the two-word statutory phrase "trust business" to sweep regulatory authority over these activities into the Bank Board's jurisdiction. Ms. Ormand-Ward's case provides a vivid illustration of the "special and important reasons" why certiorari review is critical here, and it directly rebuts the agency's argument that the Court of Appeals' unpublished decision will have no meaningful impact. Rule 242(b), SCACR.

III. Only the General Assembly can expand the agency's jurisdiction.

Finally, the agency concludes its Return by arguing that the Court should excuse the Bank Board's pre- and mid-litigation attempts to expand its own jurisdiction because, in its view, the Court of Appeals did not give deference to the agency's interpretation of "trust business." (Return at 10.) This is simply incorrect: the agency argued on appeal that the circuit court erred by not giving deference to the Bank Board's interpretation of "trust business" (Board's Opening Appellate Brief at 21–23); the Court of Appeals then recited that the agency had issued a "policy statement" that interpreted "trust business" to include all types of fiduciaries (Op. at 4); and the Court of Appeals pointed to the agency's conduct in entering a compact with other states as support for its ultimate ruling that "trust business" includes all fiduciaries. (Op. at 7–8).

The Petitioners' point on this issue is simple: only the General Assembly can expand the Bank Board's jurisdiction. The agency can't expand its own jurisdiction. *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016). But by relying on the agency's own jurisdiction-expanding activities, the Court of Appeals committed legal error when concluding the two-word phrase "trust business" means "not only the trustee of a trust but also a personal representative, conservator, guardian, or agent." (Op. at 11.) This Court should grant certiorari review accordingly and realign the Bank Board's jurisdiction to the narrow scope prescribed by the Legislature.

CONCLUSION

The Petitioners' position has been constant throughout this litigation: this case should begin and end with the plain language of South Carolina Code § 34-21-10, which gives the Bank Board authority to regulate companies engaged in "trust business" alone. Through the agency's unilateral actions, it has attempted to bypass its delegating statute and the legislative process to expand its authority to all fiduciaries. This is, at its core, agency overreach.

Yet, the Bank Board has presented no evidence or reasoning to support the Court of Appeals' conclusion that it is the qualified and appropriate agency to oversee lifechanging decisions made by non-trustee fiduciaries for vulnerable or incapacitated individuals including, for instance, whether an incapacitated person can marry or divorce, travel, drive, vote, work, or make medical or end-of-life decisions. Respectfully, the Bank Board's role is not look after individual South Carolinians who are unable to care for and make decisions for themselves. Its statutory charge is to regulate banks and companies that invest trust funds, not non-trustee fiduciaries like the Petitioners who are appointed by and are accountable to the Probate Court.

Accordingly, the Petitioners request the Court grant this petition, vacate the Court of Appeals' decision, and issue an order reinstating the circuit court's straightforward, plain-language construction of the phrase "trust business."

Signature Page Attached

Respectfully submitted,

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September 8, 2025

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Exhibit A

Order Appointing CDM Corporation as Guardian and Conservator for Gloria Ormand-Ward in *In re: Glorida Ormand-Ward*, Case No. 2021-GC-26-00069

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF HORRY	)	Case No. 2021-GC-26-00069

PROBATE COURT
HORRY COUNTY, SC
2021 SEP 24 P 12:04
KATHY G. WARD
PROBATE JUDGE

IN THE MATTER OF: GLORIA ORMAND-WARD,
An Alleged Incapacitated Individual

Grand Strand Medical Center,

Petitioner,

vs.

Gloria Ormand-Ward and Norma Lefler,

Respondent.

ORDER FINDING INCAPACITY
AND
APPOINTMENT OF GUARDIAN
AND
APPOINTMENT OF CONSERVATOR

THIS MATTER came before the Court for final hearing on September 24, 2021, before the undersigned Judge of the Probate Court for Horry County, South Carolina, pursuant to a Petition filed on August 3, 2021, in the above-referenced matter and thereafter served by Petitioner, requesting a hearing and a determination that **GLORIA ORMAND-WARD**, (herein also "Respondent Ormand-Ward") is an incapacitated person for whom appointment of a Guardian and Conservator is proper and requesting that the Court appoint CDM Corporation, by and through its representative, Stephen Mantell, as Guardian and Conservator for Respondent Ormand-Ward.

Present at the hearing were: Dundee W. Carter, Esquire, attorney for Petitioner, Grand Strand Medical Center (herein also "Petitioner"); Petitioner's representative, Keri Melson, Director of Patient Safety and Risk Management at Grand Strand Medical Center; Mary W. Tovornik, Esquire, the Court appointed Attorney for Respondent Ormand-Ward; Stephanie Van Pelt, Esquire, the Court appointed Guardian *Ad Litem* for Respondent Ormand-Ward; and Stephen Mantell, a representative of CDM Corporation.

Based upon the pleadings, exhibits, testimony and the entire record in these matters, the undersigned makes the following:

FINDINGS OF FACT

1. All interested persons, and all persons required by law, have been properly served with a copy of the pleadings, notices and other documents, waived service or personally appeared in this matter.

2. Respondent Ormand-Ward is seventy-seven (77) years old and is a resident of Horry County, South Carolina, her last known address being, 682 Providence Dr., Myrtle Beach, South Carolina, 29572. Respondent Ormand-Ward is not married and her closest living family member is her cousin, Norma Lefler of 62 Cedar Street, Unit 1103, Seattle, Washington.

3. The Examiner Report and Affidavit Regarding Capacity of Dr. Daniel Lane, MD dated July 6, 2021, and thereafter re-confirmed by Dr. Lane as accurate on September 16, 2021, has been filed with the Court and certifies that Respondent Ormand-Ward has been diagnosed with progressive vascular dementia, permanent bipolar mood disorder, temporary pulmonary embolism and is not capable of making complex decisions or capable of caring for herself. As a result of her condition, Respondent Ormand-Ward is incapacitated to the extent that she lacks the ability to effectively receive, evaluate and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot meet the essential requirements for her physical health, safety, or self-care, and cannot manage her property or financial affairs, necessitating the need for a guardian and conservator.

4. The Examiner Report and Affidavit Regarding Capacity of Dr. Daniel Lane, MD further provides that Respondent Ormand-Ward is unable to provide for her health, education, maintenance or support for herself, and she does not have the capacity to retain any of the following rights: Marry or Divorce; Reside in a place of her choosing; Consent or withhold consent to any residential or custodial placement; Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care treatment and therapies; Make end-of-life decisions, including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life; Consent or withhold consent to artificial nutrition and hydration; Consent or refuse consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment; Authorize disclosure of confidential information; Operate a vehicle; Vote; Be employed without the consent of a Guardian; Buy, sell, or transfer real or personal property or transact business of any type; Make, modify or terminate contracts; or Bring or defend any action at law or equity.

5. Based upon the recommendation of Dr. Daniel Lane, the Court appointed Attorney, Mary W. Tovornik, Esquire along with the Court appointed Guardian *ad Litem*, Stephanie Van Pelt, Esquire, opined that the Respondent Ormand-Ward should retain the following rights: travel without the consent of a guardian; consent to or refuse education services; and participate in social, religious or political activities.

6. The record, testimony and evidence provided reflects that Respondent Ormand-Ward is an incapacitated individual that lacks sufficient understanding and capacity to make or communicate responsible decisions concerning her person and property. No Guardian has been previously appointed for Respondent Ormand-Ward, the appointment of a permanent Guardian for Respondent Ormand-Ward is necessary, and the Guardian should be permitted to exercise the following rights on behalf of the incapacitated person: the authority to consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation; authority to authorize, or refuse to authorize, any medication or procedure intended to relieve pain; authority to choose appropriate housing; authority to authorize admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service; authority to take any other action necessary to making, documenting and assuring implementation of decisions concerning health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; authority to sign any documents relating to refusals of treatment, including but not limited to, Do Not Resuscitate (DNR), withdrawal of life sustaining treatments and support; the Guardian should exercise authority relating to end of life decisions and/or life-sustaining treatment after taking into consideration the burdens of the treatment and whether the burdens outweigh the expected benefits when considering the relief of suffering, expense involved and quality, as well as, possible extension of life. The Court appointed Guardian should also be permitted to make decisions on placement, medical treatment, and providers of health care services.

7. The record in this matter further reflects that Respondent Ormand-Ward may have been the victim of an unauthorized transfer of assets and/or exploitation of her financial resources. Horry County Land Records (Horry County Register of Deeds) reveals that Respondent Ormond-

Ward previously owned real property located at 682 Providence Drive, Myrtle Beach, South Carolina, said property appearing to have been allegedly transferred by Warranty Deed via an electronic/DocuSigned signature of Gloria Ormand-Ward to Homedebone LLC on February 4, 2021, and thereafter recorded on February 18, 2021 in Deed Book 4391 at Page 65 for consideration in the amount of One Hundred ($100.00) Dollars. The appointment of a conservator is necessary to conduct further investigation into whether Respondent Ormand-Ward has an ownership interest in the business known as Homedebone LLC and/or whether additional legal proceedings are necessary in order to pursue the recovery and/or to set aside the prior transfer of Respondent Ormand-Ward's property.

8. No person appearing at the hearing was aware of any additional assets owned by Respondent Ormand-Ward, including both real or personal property; and no person was aware of whether Respondent Ormand-Ward is receiving, or is entitled to receive, benefits from any other governmental agency or private enterprise. No Conservator has been previously appointed for Respondent Ormand-Ward, and the Durable Power of Attorney, designating David Litt as Attorney-in-Fact and "DocuSigned" by Respondent Ormand-Ward, does not appear to be a valid power of attorney in the state of South Carolina.

9. Respondent Ormand-Ward is vulnerable, unable to manage her own affairs, and her assets are at risk of being wasted and dissipated without the appointment of a conservator. Based upon the evidence presented, the appointment of a conservator is necessary to manage Respondent Ormand-Ward's financial affairs and to gather additional information and/or to perform a thorough investigation of Respondent Ormand-Ward's assets, to determine whether additional legal proceedings to recover previously transferred assets are necessary.

10. Stephen Mantell, representative of CDM Corporation, testified as to his willingness and qualifications to serve as Guardian and Conservator including, but not limited to, his previous experience in serving as a court appointed guardian and conservator, his fiduciary responsibilities, and his ability to furnish bond or give other suitable security as required pursuant to S.C. Code Ann. § 62-5-409. In addition, the proposed Guardian and Conservator testified that CDM Corporation has a Professional Liability Insurance Policy, which includes coverage for any of its' acts while serving in a fiduciary capacity and the Court has been provided with a copy of said policy. The Court finds that the professional liability insurance coverage is suitable security in this case to secure the fiduciary's performance.

11. Stephanie Van Pelt, Esquire has filed a Guardian *Ad Litem* Report with the Court summarizing her findings on Respondent Ormand-Ward, reporting her findings on the proposed Guardian and proposed Conservator, and has complied with the Order appointing her in this matter.

12. On behalf of Gloria Ormand-Ward, Mary W. Tovornik, Esquire, the Court appointed Attorney for Respondent Ormand-Ward, filed an Answer with this Court on September 9, 2021, contesting incapacity and objecting to the appointment of a guardian and conservator. At the onset of the hearing and prior to the submission of testimony, Attorney Tovornik informed the Court that the position of her client, Respondent Ormand-Ward, had changed and she now acknowledges her need for assistance at this time and therefore consents to the appointment of the proposed guardian and conservator.

13. Based on the foregoing facts and by agreement of the parties, clear and convincing evidence has been presented to find that Respondent Ormand-Ward lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that she, even with appropriate, reasonably available support and assistance, cannot meet the essential requirements for her physical health, safety or self-care, necessitating the need for a guardian. In addition, clear and convincing evidence has been presented that Respondent Ormand-Ward lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that she, even with appropriate, reasonably available support and assistance, cannot manage her property or financial affairs, necessitating the need for a conservator.

14. Stephanie Van Pelt, Esquire, as the Court-appointed Guardian *ad Litem* for Respondent Ormand-Ward, has ably, zealously, and competently served Respondent Ormand-Ward during all phases of this proceeding. Attorney Van Pelt is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of Respondent Ormand-Ward with such fees, costs, and expenses to be paid upon the submission of an invoice. A copy of the Affidavit of Guardian ad Litem Fees for services rendered in this matter by the Attorney Van Pelt through the date of the hearing has been filed with the Court and such fees and costs in the amount of $3,536.25 are hereby deemed fair and reasonable.

15. Mary W. Tovornik, Esquire, as the Court-appointed Attorney for Respondent Ormand-Ward, has ably, zealously, and competently served Respondent Ormand-Ward during all phases of this proceeding. Attorney Tovornik is entitled to be compensated and paid for the fees,

costs and expenses incurred and devoted by her and her firm on behalf of Respondent Ormand-Ward with such fees, costs, and expenses to be paid upon the submission of an invoice. A copy of the Affidavit of Attorney Fees for services rendered in this matter by the Attorney Tovornik through the date of the hearing has been filed with the Court and such fees and costs in the amount of $2,175.00 are hereby deemed fair and reasonable.

16. Dundee W. Carter, Esquire, attorney of record for Petitioner, has ably, zealously, and competently served Petitioner during all phases of this proceeding and is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by counsel in this matter.

17. Attorney's fees, costs, and expenditures incurred and any additional fees, costs, and expenditures incurred through conclusion of services by Petitioner's attorney, the Court appointed Guardian ad Litem and the Court appointed Attorney are hereby deemed fair and reasonable and shall be a proper disbursement from any assets or discoverable estate and property of Respondent Ormand-Ward.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter pursuant to S.C. Code Ann. § 62-5-201 and of the persons before the Court.

2. All interested parties have been properly served with the Summons and Petition pursuant to S.C. Code Ann. § 62-5-303(A) and § 62-5-403(A) and proper and timely Notice of Hearing has been given by Petitioner to all such parties pursuant to S.C. Code Ann. § 62-5-303(C) and § 62-5-403(C).

3. Venue is proper in this matter pursuant to S.C. Code Ann. § 62-5-302 and § 62-5-401.

4. Respondent Ormand-Ward is an incapacitated individual as defined in S.C. Code Ann. §62-5-101 (12) and it is in the best interest of Respondent Ormand-Ward that a Guardian and Conservator be appointed with all the authority and power as conferred by law over Respondent Ormand-Ward's person and property.

5. Pursuant to S.C. Code Ann. § 62-5-304(A) and § 62-5-407(A), the Court shall exercise its authority to encourage maximum self-reliance and independence of Gloria Ormand-Ward and shall issue orders only to the extent necessitated by the incapacitated individual.

6. Pursuant to S.C. Code Ann. §62-5-101, et. seq. all rights and powers as set forth in S.C. Code Ann. § 62-5-304(A) and § 62-5-407(B), unless otherwise specified by the Court, shall be removed from the incapacitated individual and the Court appointed Guardian and Conservator should be permitted to exercise those rights on behalf of the incapacitated individual as are necessary to protect the incapacitated individual and to provide for her health, education, maintenance and support.

7. Pursuant to S.C. Code Ann. §62-5-409, a court appointed Conservator shall be required to furnish bond conditioned upon faithful discharge of all duties of the conservator according to law and the court must approve all sureties.

NOW THEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY ORDERED that a guardianship and conservatorship are appropriate given the evidence presented, and Gloria Ormand-Ward is incapacitated to the extent that she can/cannot exercise the following rights pursuant to S.C. Code Ann. § 62-5-304(A) and § 62-5-404(B):

Remove	Retain	Other	
☒	☐	☐	1. Marry or divorce
☒	☐	☐	2. Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement
☒	☐	☐	3. Travel without the consent of the proposed Guardian
☒	☐	☐	4. Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies
☒	☐	☐	5. Make end-of-life decisions including, but not limited to, a 'do not resuscitate' order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration
☒	☐	☐	6. Consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment
☒	☐	☐	7. Authorize disclosures of confidential information
☒	☐	☐	8. Operate a vehicle
☒	☐	☐	9. Vote
☒	☐	☐	10. Be employed without the consent of the proposed Guardian
☐	☒	☐	11. Consent to or refuse educational services
☐	☒	☐	12. Participate in social, religious or political activities
☒	☐	☐	13. Buy, sell, or transfer real or personal property or transact business of any type
☒	☐	☐	14. Make, modify, or terminate contracts
☒	☐	☐	15. Bring or defend any action at law or equity

IT IS FURTHER ORDERED that **CDM Corporation, by and through its representative, Stephen Mantell,** is hereby appointed as Guardian of the person of Gloria Ormand-Ward, with all the authority and power as conferred by law, and may consent, or withhold consent, to any and all medical or other professional, care, counsel, treatment, or services for Respondent Ormand-Ward.

IT IS FURTHER ORDERED that the Guardian shall prepare and file a complete Plan of Care (Form #521GC) for Gloria Ormand-Ward within thirty (30) days of its appointment, and shall prepare and file a complete Guardian Report (Form #534GC) with the Court each year.

IT IS FURTHER ORDERED that **CDM Corporation, by and through its representative, Stephen Mantell,** is hereby appointed as Conservator of Gloria Ormand-Ward and shall have the authority to exercise all powers of a conservator in administration as set forth in S.C. Code Ann. § 62-5-422(A).

IT IS FURTHER ORDERED that the Conservator shall be required to maintain its professional liability insurance coverage for the duration of the conservatorship and in the event the fiduciary fails to renew the professional liability insurance policy, the Conservator shall submit a fiduciary bond pursuant to in S.C. Code Ann. § 62-5-409 and shall maintain the fiduciary bond for the remainder of this conservatorship.

IT IS FURTHER ORDERED that within thirty days of appointment, the Conservator shall prepare and file with the Court a complete inventory of the estate of the protected person, file a financial plan with the Court pursuant to S.C. Code Ann. § 62-5-414, and shall report to the Court regarding his administration of the estate annually as set forth in S.C. Code Ann. § 62-5-416.

IT IS FURTHER ORDERED that all persons are directed and commanded to provide access to any of Gloria Ormand-Ward's financial account(s) and all of the property of Gloria Ormand-Ward, of every kind and nature, which may be in such person's possession or under such person's control to the Conservator, on demand by the Conservator and upon presentation of a copy of his Certificate of Appointment.

IT IS FURTHER ORDERED that within thirty (30) days, the Guardian shall notify the Court in writing of any changes in: (i) address, (ii) Gloria Ormand-Ward's custodial dwelling or address, and (iii) Gloria Ormand-Ward's condition should she become more capable, or less capable, of exercising rights previously removed or retained.

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IT IS FURTHER ORDERED that the Guardian and the Conservator are bound by all the other duties, responsibilities, and fiduciary obligations contained in the S.C. Code Ann. § 62-5-309 and S.C. Code Ann. § 62-5-407, *et. seq.,* except as modified by order of this Court. The Guardian and Conservator shall be accountable to this Court for any violations of its duties or for any failure to file and account to the Court. Failure to comply with this Order is punishable by this Court's contempt powers, which may include community service, fines, or imprisonment, or any combination thereof that the Court deems appropriate.

IT IS FURTHER ORDERED that the Guardian and Conservator shall be entitled to reasonable sums and compensation for its services as allowed by law, and Petitioner shall be entitled to the reimbursement of such fees and costs incurred in this action from any discoverable estate or property of Gloria Ormand-Ward, including but not limited to, Petitioner's attorney fees, Guardian ad Litem fees, and compensation paid to the Guardian and Conservator for its services rendered in this matter.

The notice required by S.C. Code Ann. § 23-31-1040 (a copy of which is attached to and made a part of this Order) has been provided to Gloria Ormand-Ward or his representative.

IT IS SO ORDERED.

R. Allen Beverly Jr.

The Honorable R. Allen Beverly, Jr.
Chief Associate Probate Judge

September 24th, 2021.
Conway, South Carolina

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PURSUANT TO S. C. CODE ANN. § 23-31-1040(D), YOU ARE HEREBY NOTIFIED THAT IT IS UNLAWFUL AND A FELONY UNDER STATE AND FEDERAL LAW FOR YOU TO SHIP, TRANSPORT, POSSESS, OR RECEIVE A FIREARM OR AMMUNITION.

Section 23-31-1040. (A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.

The Supreme Court of South Carolina

South Carolina Board of Financial Institutions,
Respondent,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Petitioners.

Appellate Case No. 2025-001557

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file ten additional copies of the appendix and ten copies of their briefs in the manner provided by Rule 242(i), SCACR.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
November 18, 2025

cc:
James Dunbar Myrick
Matthew Todd Carroll
Molly McKenna McDermid
Shawn David Eubanks
William J. Condon, Jr.
Alan McCrory Wilson
Robert D. Cook
J. Emory Smith, Jr.
Thomas Tyler Hydrick
The Honorable Jenny Abbott Kitchings