



SPONSOR: Rep. B. Short & Rep. M. Smith & Rep. Walker & Sen. Townsend
Reps. Baumbach, Gray, Keeley, Paradee, Potter, Ramone;
Sens. Ennis, Hall-Long, Lavelle, McDowell, Pettyjohn

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 364

AN ACT TO AMEND CHAPTER 38, TITLE 12 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC STATUTORY TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 3803(d), Title 12 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 (d) No obligation of a beneficial owner or trustee of a statutory trust to the statutory trust, or to a beneficial owner or
4 trustee of the statutory trust, arising under the governing instrument or a separate agreement in writing, and no note, instrument
5 or other writing evidencing any such obligation of a beneficial owner or trustee, shall be subject to the defense of usury, and no
6 beneficial owner or trustee shall interpose the defense of usury with respect to any such obligation in any action.

7 Section 2. Amend § 3806(b), Title 12 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 (b) A governing instrument may contain any provision relating to the management of the business and affairs of the
10 statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary
11 to any provision or requirement of this subchapter and, without limitation:

12 (1) May provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of
13 beneficial interests, having such relative rights, powers and duties as the governing instrument may provide, and may
14 make provision for the future creation in the manner provided in the governing instrument of additional classes, groups
15 or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may from
16 time to time be established, including rights, powers and duties senior or subordinate to existing classes, groups or series
17 of trustees, beneficial owners or beneficial interests;

18 (2) May establish or provide for the establishment of designated series of trustees, beneficial owners, assets
19 or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the
20 statutory trust or profits and losses associated with specified property or obligations, and, to the extent provided in the
21 governing instrument, any such series may have a separate business purpose or investment objective;

22 (3) May provide for the taking of any action, including the amendment of the governing instrument, the
23 accomplishment of a merger, conversion or consolidation, the appointment of one or more trustees, the sale, lease,
24 exchange, transfer, pledge or other disposition of all or any part of the assets of the statutory trust or the assets of any
25 series, or the dissolution of the statutory trust, or may provide for the taking of any action to create under the
26 provisions of the governing instrument a class, group or series of beneficial interests that was not previously
27 outstanding, in any such case without the vote or approval of any particular trustee or beneficial owner, or class,
28 group or series of trustees or beneficial owners;

29 (4) May grant to (or withhold from) all or certain trustees or beneficial owners, or a specified class, group or
30 series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups or series of
31 the trustees or beneficial owners, on any matter, such voting being on a per capita, number, financial interest, class,
32 group, series or any other basis;

33 (5) May, if and to the extent that voting rights are granted under the governing instrument, set forth
34 provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on,
35 waiver of any such notice, action by consent without a meeting, the establishment of record dates, quorum
36 requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of
37 any such right to vote;

38 (6) May provide for the present or future creation of more than 1 statutory trust, including the creation of a
39 future statutory trust to which all or any part of the assets, liabilities, profits or losses of any existing statutory trust
40 will be transferred, and for the conversion of beneficial interests in an existing statutory trust, or series thereof, into
41 beneficial interests in the separate statutory trust, or series thereof;

42 (7) May provide for the appointment, election or engagement, either as agents or independent contractors of
43 the statutory trust or as delegates of the trustees, of officers, employees, managers or other persons who may manage
44 the business and affairs of the statutory trust and may have such titles and such relative rights, powers and duties as
45 the governing instrument shall provide. Except to the extent otherwise provided in the governing instrument of a
46 statutory trust, the trustees shall choose and supervise such officers, managers, employees and other persons;

47 (8) May provide rights to any person, including a person who is not a party to the governing instrument, to
48 the extent set forth therein; ~~or~~

49 (9) May provide for the manner in which it may be amended, including by requiring the approval of a
50 person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing
51 instrument provides for the manner in which it may be amended such governing instrument may be amended only in

52 that manner or as otherwise permitted by law, including as permitted by § 3815(f) of this title (provided that the
53 approval of any person may be waived by such person and that any such conditions may be waived by all persons for
54 whose benefit such conditions were intended). Unless otherwise provided in a governing instrument, a supermajority
55 amendment provision shall only apply to provisions of the governing instrument that are expressly included in the
56 governing instrument. As used in this section, "supermajority amendment provision" means any amendment
57 provision set forth in a governing instrument requiring that an amendment to a provision of the governing instrument
58 be adopted by no less than the vote or consent required to take action under such latter provision. If a governing
59 instrument does not provide for the manner in which it may be amended, the governing instrument may be amended
60 with the approval of all of the beneficial owners and trustees or as otherwise permitted by law, including as permitted
61 by § 3815(f) of this chapter; or

62 (10) May provide for specific trustees, a certain number of trustees or a threshold percentage of trustees
63 required to vote in favor of any action in order for such action to be considered approved by the trustees; except that,
64 if the governing instrument is silent as to the specific trustees, number of trustees or threshold percentage of trustees
65 so required, then unless otherwise provided in this chapter or in the governing instrument, the vote of a majority of
66 the trustees (or, in the event that such action requires the approval of a particular class, group, or series of trustees,
67 then a majority of such class, group, or series) shall be sufficient to approve such action.

68 Section 3. Amend § 3806(f), Title 12 of the Delaware Code by making deletions as shown by strike through and
69 insertions as shown by underline as follows:

70 (f) Unless otherwise provided in the governing instrument of a statutory trust, meetings of beneficial owners may be
71 held by means of conference telephone or other communications equipment by means of which all persons participating in the
72 meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the
73 meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the
74 beneficial owners:

75 (1) The beneficial owners may take such action without a meeting, without a prior notice and without a vote
76 if consented to, in writing, or by electronic transmission by beneficial owners having not less than the minimum
77 number of votes that would be necessary to authorize or take such action at a meeting at which all interests in the
78 statutory trust entitled to vote thereon were present and voted; and

79 (2) The beneficial owners may vote in person or by proxy, and such proxy may be granted in writing, by
80 means of electronic transmission; or as otherwise permitted by applicable law.

81 Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a beneficial

82 owner or by a person or persons authorized to act for a beneficial owner shall be deemed to be written and signed for purposes
83 of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not
84 directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a
85 recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Unless
86 otherwise provided in a governing instrument, if a person (whether or not then a beneficial owner) consenting as a beneficial
87 owner to any matter provides that such consent will be effective at a future time (including a time determined upon the
88 happening of an event), then such person shall be deemed to have consented as a beneficial owner at such future time so long
89 as such person is then a beneficial owner.

90 Section 4. Amend § 3806(g), Title 12 of the Delaware Code by making deletions as shown by strike through and
91 insertions as shown by underline as follows:

92 (g) Unless otherwise provided in the governing instrument of a statutory trust, meetings of trustees may be held by
93 means of conference telephone or other communications equipment by means of which all persons participating in the meeting
94 can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the
95 meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the
96 trustees:

97 (1) The trustees may take such action without a meeting, without a prior notice and without a vote if
98 consented to, in writing, or by electronic transmission, by trustees having not less than the minimum number of votes
99 that would be necessary to authorize or take such action at a meeting at which all trustees entitled to vote thereon
100 were present and voted; and

101 (2) The trustee may vote in person or by proxy, and such proxy may be granted in writing, by means of
102 electronic transmission, or as otherwise permitted by applicable law.

103 Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a trustee or
104 by a person or persons authorized to act for a trustee shall be deemed to be written and signed for purposes of this subsection.
105 For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving
106 the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and
107 that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in
108 a governing instrument, if a person (whether or not then a trustee) consenting as a trustee to any matter provides that such
109 consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall
110 be deemed to have consented as a trustee at such future time so long as such person is then a trustee.

111 Section 5. Amend § 3807(c), Title 12 of the Delaware Code by making deletions as shown by strike through and

112 insertions as shown by underline as follows:

113 (c) Any statutory trust maintaining a registered office and registered agent in this State under subsection (b) of this
114 section may change the location of its registered office in this State to any other place in this State, or may change the
115 registered agent to any other person or corporation (meeting the requirements contained in subsection (b) of this section), by
116 filing an amendment to its certificate of trust in accordance with the applicable provisions of this subchapter. If a statutory
117 trust which is an investment company registered as aforesaid maintains a registered office and a registered agent in this State
118 as herein provided, then the reference in § 3810(a)(1)b. of this title to the “name and ~~the business~~ address in this State of at
119 least 1 of the trustees meeting the requirements of § 3807 of this title” shall be deemed a reference to the name and ~~the~~
120 business address in this State of the registered agent and registered office maintained under this section, and the certificate of
121 trust filed under § 3810 of this title shall reflect such information in lieu of the information otherwise required by §
122 3810(a)(1)b. of this title.

123 Section 6. Amend § 3814(c), Title 12 of the Delaware Code by making deletions as shown by strike through and
124 insertions as shown by underline as follows:

125 (c) The name of each statutory trust, as set forth in its certificate of trust, may contain the following words:
126 “company,” “association,” “club,” “foundation,” “fund,” “institute,” “society,” “union,” “syndicate,” “limited,” or “trust” (or
127 abbreviations of like import) but shall not contain the word “bank,” or any variation thereof, except for the name of a bank
128 reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings
129 association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a statutory
130 trust regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners’
131 Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use
132 of the word “bank,” or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise
133 likely to mislead the public about the nature of the business of the statutory trust or to lead to a pattern and practice of abuse
134 that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the
135 Department of State.

136 Section 7. Amend § 3815(a), Title 12 of the Delaware Code by making deletions as shown by strike through and
137 insertions as shown by underline as follows:

138 (a) Pursuant to an agreement of merger or consolidation, a statutory trust may merge or consolidate with or into 1 or
139 more statutory trusts or other business entities formed or organized or existing under the laws of the State of Delaware or any
140 other state or the United States or any foreign country or other foreign jurisdiction, with such statutory trust or other business
141 entity as the agreement shall provide being the surviving or resulting statutory trust or other business entity. Unless otherwise

142 provided in the governing instrument of a statutory trust, an agreement of merger or consolidation shall be approved by each
143 statutory trust which is to merge or consolidate by all of the trustees and the beneficial owners of such statutory trust. In
144 connection with a merger or consolidation hereunder, rights or securities of, or interests in, a statutory trust or other business
145 entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights
146 or securities of, or interests in, the surviving or resulting statutory trust or other business entity or, in addition to or in lieu
147 thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a statutory trust or other
148 business entity which is not the surviving or resulting statutory trust or other business entity in the merger or consolidation,
149 may remain outstanding or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation may
150 be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or
151 consolidation.

152 Section 8. Amend § 3820(i), Title 12 of the Delaware Code by making deletions as shown by strike through and
153 insertions as shown by underline as follows:

154 (i) In connection with a conversion hereunder, rights or securities of or interests in the other business entity which is
155 to be converted to a statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in,
156 such statutory trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or
157 securities of, or interests in, another statutory trust or other business entity, may remain outstanding or may be cancelled.

158 Section 9. Amend § 3821(d), Title 12 of the Delaware Code by making deletions as shown by strike through and
159 insertions as shown by underline as follows:

160 (d) In connection with a conversion of a statutory trust to an other business entity pursuant to this Section, rights or
161 securities of, or interests in, the statutory trust which is to be converted may be exchanged for or converted into cash, property,
162 rights or securities of, or interests in, the other business entity into which the statutory trust is being converted or, in addition to
163 or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other
164 business entity, may remain outstanding or may be cancelled.

165 Section 10. Amend § 3822(j), Title 12 of the Delaware Code by making deletions as shown by strike through and
166 insertions as shown by underline as follows:

167 (j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity
168 that is to be domesticated as a domestic statutory trust may be exchanged for or converted into cash, property, rights or
169 securities of, or interests in, such domestic statutory trust or, in addition to or in lieu thereof, may be exchanged for or
170 converted into cash, property, rights or securities of, or interests in, another domestic statutory trust or other entity, may remain
171 outstanding or may be cancelled.

172 Section 11. Amend § 3823(f), Title 12 of the Delaware Code by making deletions as shown by strike through and
173 insertions as shown by underline as follows:

174 (f) In connection with a transfer or domestication of a statutory trust to or in another jurisdiction pursuant to
175 subsection (a) of this section, rights or securities of, or interests in, such statutory trust may be exchanged for or converted into
176 cash, property, rights or securities of, or interests in, the other business entity in which the statutory trust will exist in such
177 other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for
178 or converted into cash, property, rights or securities of, or interests in, any other business entity, may remain outstanding or
179 may be cancelled.

180 Section 12. This Act shall become effective August 1, 2014.

SYNOPSIS

This bill makes the following changes to Delaware Statutory Trust Act (the “Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends § 3803(d) of the Act to clarify that a defense of usury shall not apply to obligations of a beneficial owner or trustee of a statutory trust owed to a beneficial owner or trustee of a statutory trust when the obligations arise under the governing instrument or a separate agreement in writing.

Section 2. This section amends § 3806(b) of the Act to clarify that a governing instrument of a statutory trust may designate a threshold number of trustees whose vote is required to approve any action on behalf of a trust. Otherwise, when the governing instrument is silent the default threshold will be a majority of the trustees. This section is consistent with § 3323 of Chapter 33, Title 12 of the Delaware Code.

Section 3. This section amends § 3806(f) of the Act to confirm and clarify that unless otherwise provided in a governing instrument, a person who is not then a beneficial owner may consent to any matter as a beneficial owner provided that such consent will only be effective at a time when such person is a beneficial owner of the statutory trust.

Section 4. This section amends § 3806(g) of the Act to confirm and clarify that unless otherwise provided in a governing instrument, a person who is not then a trustee may consent to any matter as a trustee provided that such consent will only be effective at a time when such person is a trustee of the statutory trust.

Section 5. This section amends § 3807(c) of the Act to provide that an investment company maintaining a registered office and registered agent in the State under § 3807(b) need only provide an address in the State, rather than a business address in the State, to comply with the requirements of § 3810(a)(1)b.

Section 6. This section amends § 3814(c) of the Act to restrict the use of the word “bank” in the name of a statutory trust.

Section 7. This section amends § 3815(a) of the Act to expressly allow the rights or securities of, or interests in, a statutory trust or other business entity which is a constituent party to a merger or consolidation to remain outstanding upon such merger or consolidation.

Section 8. This section amends § 3820(i) of the Act to expressly allow the rights or securities of, or interests in, the other business entity which is converted into a statutory trust to remain outstanding upon such conversion.

Section 9. This section amends § 3821(d) of the Act to expressly allow the rights or securities of, or interests in, a statutory trust which is to be converted to an other business entity to remain outstanding upon such conversion.

Section 10. This section amends § 3822(j) of the Act to expressly allow the rights or securities of, or interests in, a non-United States entity which is to be domesticated as a domestic statutory trust to remain outstanding upon such domestication.

Section 11. This section amends § 3823(f) of the Act to expressly allow the rights or securities of, or interests in, a statutory trust which is to be transferred to or domesticated in another jurisdiction to remain outstanding upon such transfer or domestication.

Section 12. This section provides that the proposed amendments of the Act shall become effective August 1, 2014.