Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM STATUTORY TRUST ENTITY ACT (2009) (LAST AMENDED 2013)

The Uniform Statutory Trust Entity Act (USTEA) provides statutory validation of the trust form as a mode of business organization. The entity arising under the act, the statutory trust, provides a flexible business entity that can be used as an alternative to the partnership, limited liability company, and corporate forms of organization. The trust form is commonly used in the mutual fund and securitization industries, and it is also used in certain tax-advantaged real estate transactions.

Although 30 states have enacted legislation validating the trust as a permissible form of business or organization, much of this legislation is unclear, out of date, and incomplete. The statutes are also inconsistent across the states, or simply silent, on critical issues such as the applicable underlying source of law, principles of limited liability, and the permissibility of series trusts.

In the last twenty years, most statutory trusts have been organized in Delaware under the Delaware Statutory Trust Act adopted in 1988, and most of the state legislation since then has been patterned on the Delaware Act. For this reason, the USTEA was likewise modeled on the Delaware act, but with a host of important refinements and improvements. Highlights of the USTEA include:

- ***Unambiguous entity status.*** Under the USTEA, a statutory trust can hold property, sue and be sued in its own name, and provides investors with limited liability akin to that in a corporation or limited liability company.

- ***Flexibility for commercial needs.*** Under the USTEA, a statutory trust can be adapted for use by any type of business, large or small; can have one or more trustees, various classes of beneficiaries; and can have any characteristics set forth in the governing instrument, subject to several mandated prohibitions grounded in public policy, such as a proscription against indemnification for bad faith or willful misconduct.

- ***Series trusts.*** The USTEA provides comprehensive statutory guidance on the use of series trusts, including notice provisions to protect third parties, clarification of the relationship of each series to the statutory trust, and clarification of liability rules for a series trust. Series trusts are used throughout the mutual fund industry.

- ***Separation from donative trusts.*** The USTEA prohibits the use of a statutory trust for donative purposes, protecting the integrity of the state's laws regulating the use of trusts in donative transfers.

- ***Clarity and simplicity.*** The USTEA addresses public filing rules; the operation of foreign statutory trusts; conversion, merger, and dissolution of statutory trusts; and the relationship between the common law trust and statutory trust entities.

- ***Uniformity.*** The USTEA reconciles the varying and often inadequate existing state laws pertaining to business trust entities, promoting interstate commerce and bringing to rest the legal uncertainty surrounding the use of the trust form as a mode of business organization.

For more information about the USTEA, please contact Libby Snyder at (312) 450-6619 or by email at lsnyder@uniformlaws.org.