

1 [ARTICLE 4]

2
3 **SERIES TRUSTS**

4
5
6 **SECTION 401. SERIES OF STATUTORY TRUST.**

7 (a) The governing instrument may provide for designated series of trustees, beneficial
8 owners or beneficial interests having separate rights, powers, or duties with respect to specified
9 property or obligations of the statutory trust.

10 (b) A series of a statutory trust is not an entity separate from the statutory trust.

11 **Comment**

12
13 **Principal Sources** – Delaware Statutory Trust Act §3806.

14
15 Paragraph (a) of this section confirms that a statutory trust may be organized with one or
16 more series. **[For discussion: (1) Does the restoration of “trustees” in paragraph (a) resolve**
17 **the problem raised by Haynsworth of a series-specific trustee favoring the series even to the**
18 **detriment of the trust as a whole, that is, does restoration of “trustees” resolve the problem**
19 **of a conflict between the best interests of a series and the best interests of the trust in cases**
20 **where the governing instrument provides that the trustee has duties only to a series of the**
21 **trust? (2) Do we need further language here or in Section 403 or in Section 505 (standards**
22 **of conduct of trustees) to validate trustees with duties only to a particular series? (3) Do we**
23 **need additional language here or in Section 505 (the general statement of the trustee’s duties**
24 **of loyalty and care) to that end? –Rob]**

25
26 Paragraph (b) [discussion of non-entity status to come, including the points that we are
27 making explicit what is implicit in the Delaware act, that we decided against specifying entity type
28 powers that are not granted (such as the power to sue and be sued in its own name) to avoid a
29 negative implication, and that entity status for tax purposes is a separate question not addressed
30 here (analogy is to common law trust, which is not an entity under state trust law but is for federal
31 tax purposes)].

32
33 Under Section 103(c)(4), paragraph (b) of this Section is not subject to override by the
34 governing instrument.
35

36 **SECTION 402. LIABILITY OF SERIES.**

37 (a) Subject to subsection (b), if a statutory trust has one or more series as provided in

38 Section 401:

(1) a debt, obligation, or other liability incurred or otherwise existing with respect to the property of a particular series is enforceable against the property of the series only, and not against the property of the trust generally or any other series thereof; and

(2) none of the debts, obligations, or other liabilities incurred or otherwise existing with respect to the trust generally or the property of any other series thereof is enforceable against the property of the series;

(b) Section (a) applies only if:

(1) records are maintained for the series that reasonably identify the property of the series, including by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any property, or by any other method where the identity of the property of the series is objectively determinable; and

(2) notice of series is set forth in the certificate of trust pursuant to Section 201(b)(4).

(c) For purposes of [Uniform Fraudulent Transfers Act or other state fraudulent transfer act], the association, disassociation, or reassociation of property with a series is a transfer of that property.

[For discussion: It might be clearer and more effective to absorb the test for a fraudulent transfer from the UFTA and to prohibit an association, disassociation, or reassociation of property that would meet the test if the series were a separate entity. A variant on this theme would be to provide that an association, disassociation, or reassociation is prohibited if the association, disassociation, or reassociation would have been a fraudulent transfer under the state's fraudulent transfer law if the series were a separate entity. –Rob]

Comment

Principal Sources – Delaware Statutory Trust Act §3804; Delaware Limited Liability Company Act §18-215.

Paragraph (a) provides that if a statutory trust creates one or more series under Section 401 and satisfies the conditions of paragraph (b), the debts, liabilities, and other obligations of a

1 particular series are enforceable against the property of that series only. In such circumstances, the
2 debts, liabilities, and other obligations of the trust generally and any other series thereof are not
3 enforceable against the property of the series. [Discussion of the common creditor problem and
4 the idea of the trust as a separate bucket from each series to come.]

5
6 Paragraph (b) sets forth two conditions that must be satisfied before the liability-limiting
7 rules of paragraph (a) may apply: (1) records must be maintained that reasonably identify the
8 property of the series, and (2) notice of the limitation on liabilities of a series must be set forth in
9 the certificate of trust.

10
11 The earmarking requirement of paragraph (b)(1) safeguards the separate interests of the
12 beneficial owners of each series by clarifying the boundaries between the property and liabilities
13 of each series. For similar reasons, the earmarking requirement also protects third parties that deal
14 with a series trust. Third parties are further protected by paragraph (b)(2), which conditions
15 limited liability across series on notice in the certificate of trust that the trust might have one or
16 more series.

17
18 Failure to satisfy paragraph (b) exposes the property of one series to the creditors of
19 another series and the creditors of the trust generally. In such a case, the failure to maintain
20 separate records would likely amount to a breach of trust under Section 505, remediable by a
21 beneficial owner in a derivative or direct suit against the trustee. [further discussion of trust versus
22 series level buckets to come.]

23
24 Paragraph (c) addresses the concern that [discussion to come, the basic idea is that we
25 don't want to allow transfer of property from series A to series B, thereby frustrating the creditors
26 of series A, if the transfer will leave series A insolvent or otherwise would have qualified as a
27 fraudulent transfer if A and B were separate entities; must also make point that "for purposes of" is
28 meant to restrict the application of the paragraph to fraudulent transfer law only, without
29 implication for taxation or bankruptcy or anything else].

30
31 Under Section 103(c)(4), paragraphs (b) and (c) of this Section are not subject to override
32 by the governing instrument.

33
34
35 **SECTION 403. ~~GOVERNANCE OF~~VOTING IN SERIES TRUST.** The governing
36 instrument may grant to, or withhold from, all or certain trustees or beneficial owners, or a
37 specified series of trustees or beneficial owners, the right to vote, separately or with any or all
38 other trustees or beneficial owners, or series of trustees or beneficial owners, on any matter.

39 **Comment**

40
41 **Principal Sources** – [to come].
42

1 [Default rule notation and discussion of section to come.]
2

3 **SECTION 404. SEPARATE PURPOSE OF SERIES.** A series of a statutory trust may
4 have a separate purpose from the trust or any other series thereof provided that the purpose of the
5 series is lawful and not a prevailingly donative purpose.

6 **Comment**
7

8 **Principal Sources** – Delaware Statutory Trust Act §3806.
9

10 [discussion and cross-reference to Section 302 to come.]
11

12 Under Section 103(c)(4), this Section is not subject to override by the governing
13 instrument.
14

15 **SECTION 405. SERIES TRUST AS INVESTMENT COMPANY.** If a statutory trust
16 is a registered investment company under the Investment Company Act of 1940, [as amended,] 15
17 U.S.C. Section 80a-1 et seq., [or any successor statute thereto,] [and any regulations issued
18 thereunder,] any series of beneficial interests established by the governing instrument of the trust is
19 a series preferred in distribution of property or payment of dividends over all other series with
20 respect to property specifically allocated to the series under Section 18 of the Investment Company
21 Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., or any amendment or successor
22 provision, [and any regulations issued thereunder].

23 **Comment**
24

25 **Principal Sources** – Delaware Statutory Trust Act §3805.
26

27 The organization of a master statutory trust with several series is particularly common
28 among statutory trusts that are registered as investment companies under the Investment Company
29 Act of 1940, as amended, 15 U.S.C. Sections 80a-1 et seq. (the “1940 Act”).
30

31 [Remainder of comment to come.]
32
33

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

(b) A series is dissolved, and its activities must be wound up, upon the occurrence of an event or circumstance that the governing instrument states causes dissolution.

(d) Any person, including a trustee, that under the governing instrument is responsible for winding up the affairs of a series under subsection (a) is not liable to the claimants of the dissolved series by reason of the person's actions in winding up the series if the person complied with this section.

Comment

Under Section 103(c)(4), paragraph (c) of this Section is not subject to override by the governing instrument.