

1 [Article] 3A

2
3 SERIES TRUSTS

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5
6 SECTION 301A. 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. **[For**
11 **discussion: whether to make paragraph (b) a separate section, and if so, where to place it.]**

12 **Comment**

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

15
16 Paragraph (a) of this section confirms that a statutory trust may be organized with one or
17 more series of assets. **[For discussion: (1) Whether to add a definition in Section 102 to the**
18 **effect that “‘Series’ means a segregation of assets as provided in [cross-reference].” (2) If so,**
19 **whether we should also discuss whether to explain of how a series is different than classes of**
20 **interests under Section 104 (including the point that a series of assets requires notice for**
21 **third parties, etc.). (3) Inconsistency in this article in the use of “assets” versus “property”**
22 **of a series.]**

23
24 The organization of a master statutory trust with several series is particularly common
25 among statutory trusts that are registered investment companies under the Investment Company
26 Act of 1940, as amended, 15 U.S.C. Sections 80a-1 et seq. (the “1940 Act”). Rule 18f-2 under the
27 1940 Act permits an investment company to have multiple series, provided that any matter
28 required by the 1940 Act or other applicable law to be submitted to the holders of the outstanding
29 voting securities of a series company shall not be deemed to have been effectively acted upon
30 unless approved by the holders of a majority of the outstanding voting securities of each series of
31 stock affected by such matter. Rule 18f-2 also specifies certain instances where the vote is
32 required by all of the security holders of the investment company and other instances where only
33 the security holders of a series are required to vote.

34
35 Paragraph (b) **[Discussion of rejection of separate entity status to come. The discussion**
36 **will explain that (1) we are making explicit what is implicit in Delaware, resolving ambiguity**
37 **among existing entity acts with series provisions; and that (2) we decided against specifying**
38 **entity powers that are not granted to a series such as the power to sue or be sued in its own**
39 **name to avoid the implication that a series has other entity powers not expressly excluded.]**
40

1 [For Discussion: Confirming that Section 301A will be mandatory.]
2

3 **SECTION 302A. LIABILITY OF SERIES.**

4 (a) Subject to subsection (b), if a statutory trust has one or more series as provided in
5 Section 301A, the following rules apply:

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

9 (2) None of the debts, obligations, or other liabilities incurred, contracted for, or
10 otherwise existing with respect to the trust generally or any other series thereof is enforceable
11 against the assets of the series; **[For discussion: Whether as revised here paragraphs (a)(1)**
12 **and (a)(2) are sufficient to obviate former Section 304A and our planned revisions to that**
13 **section.]**

14 (b) The liability rules of subsection (a) apply only if:

15 (1) separate and distinct records are maintained for the series and the assets
16 associated with the series are held in separate and distinct records, directly or indirectly, including
17 through a nominee or otherwise, and accounted for in separate and distinct records separately from
18 the other assets of the trust, or any other series thereof;

19 (2) notice of the possibility of one or more series is set forth in the certificate of
20 trust pursuant to Section 201; and

21 (3) the association or reassociation of assets with the series is not a [fraudulent
22 transfer] under [fraudulent transfer act] **[For discussion: Paragraph (3) obviously needs**
23 **improvement.]**

24 **Comment**

1
2 **Principal Sources** – Delaware Statutory Trust Act §3804.
3

4 Paragraph (a) provides that if a statutory trust creates one or more series under Section
5 301A and satisfies the conditions of paragraph (b), the debts, liabilities, and other obligations of a
6 particular series are enforceable against the assets of that series only. In such circumstances, the
7 debts, liabilities, and other obligations of the trust generally and any other series thereof are not
8 enforceable against the assets of the series.
9

10 Paragraph (b) sets forth three conditions that must be satisfied before the liability-limiting
11 rules of paragraph (a) may apply: (1) separate records must be maintained for each series, (2)
12 notice of the limitation on liabilities of a series must be set forth in the certificate of trust, and (3)
13 **[insert]**.
14

15 The earmarking requirement of paragraph (b)(1) safeguards the separate interests of the
16 beneficial owners of each series by clarifying the boundaries between the assets and liabilities of
17 each series. For similar reasons, the earmarking requirement also protects third parties that deal
18 with a series trust. Third parties are further protected by paragraph (b)(2), which conditions
19 limited liability across series on notice in the certificate of trust that the trust might have one or
20 more series. Paragraph (b)(3) addresses the concern that **[insert]**.
21

22 Failure to satisfy paragraph (b) exposes the property of one series to the creditors of
23 another series and the creditors of the trust generally. In such a case, the failure to maintain
24 separate records would likely amount to a breach of trust under Section 404, remediable by a
25 beneficial owner in a derivative or direct suit against the trustee.
26

27 **[For Discussion: (1) Whether the conditions in paragraph (b) for limiting series and**
28 **trust liability will be mandatory. (2) Whether the limitations on liability state in paragraph**
29 **(a) should be default.]**
30

31 **SECTION 303A. GOVERNANCE OF SERIES.** The governing instrument may grant
32 to, or withhold from, all or certain trustees or beneficial owners, or a specified series of trustees or
33 beneficial owners, the right to vote, separately or with any or all other series of the trustees or
34 beneficial owners, on any matter.

35 **Comment**
36

37 **[For Discussion: Confirming that Section 303A need not be mandatory.]**
38

39 **SECTION 304A. SEPARATE PURPOSE OF SERIES.** A series of a statutory trust may

1 have a separate business purpose or investment objective from the trust or a series thereof.

2 **Comment**

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4 **Principal Sources** – Delaware Statutory Trust Act §3806.

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6 **[For Discussion: Confirming that Section 304A need not be mandatory.]**

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9 **SECTION 305A. SERIES TRUST AS INVESTMENT COMPANY.** If a statutory trust
10 is a registered investment company under the Investment Company Act of 1940, [as amended,] 15
11 U.S.C. Section 80a-1 et seq., [and any regulations issued thereunder,] any series of beneficial
12 interests established by the governing instrument of the trust is a series preferred in distribution of
13 assets or payment of dividends over all other series with respect to assets specifically allocated to
14 the series under Section 18, or any amendment or successor provision, of the Investment Company
15 Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [and any regulations issued
16 thereunder].

17 **Comment**

18
19 **Principal Sources** – Delaware Statutory Trust Act §3804.

20
21 The section addresses Section 18 of the 1940 Act, which governs the capital structure of an
22 investment company. The 1940 Act was intended to prevent inequitable or discriminatory
23 provisions that fail to protect the preferences and privileges **[For Discussion: What does**
24 **“preferences and privileges” mean?]** of the holders of shares and excessive borrowing or
25 issuance of senior securities (where there are preferences of rights among classes) that expose the
26 fund and its shareholders to additional risk. Accordingly, Section 18 defines and places
27 restrictions on “senior securities” while at the same time allows segregated pools of assets (i.e.,
28 separate funds or series) to be created under a single trust, and separate classes of shares
29 representing interests in the same pool of assets with certain limited instances where there are
30 different voting rights or dividend preferences. **[For Discussion: (1) Further input from Bibb**
31 **and Victor is requested. (2) Default versus mandatory.]**

32
33 **SECTION 306A. DISSOLUTION OF SERIES.**

34 (a) A series of a statutory trust may be dissolved or its assets distributed without causing

1 the dissolution of the trust or any other series thereof.

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

4 (c) Subject to the liability rules stated in Section 302A, the statutory trust shall discharge
5 the debts, obligations, and other liabilities associated with the property of the dissolved series.

6 **[For Discussion: Do we need language such as “Upon dissolution of a series, the persons that**
7 **under the governing instrument are responsible for winding up the affairs of the series may**
8 **cause the statutory trust take all actions as are permitted under Section 702(c), shall provide**
9 **for the claims and obligations of the series as provided in Sections 703 and 704, and**
10 **distribute the assets of the series as provided in Section 708”?]**

11 (d) Any person, including a trustee, that under the governing instrument is responsible for
12 winding up the affairs of a series under subsection (a) is not liable to the claimants of the dissolved
13 series by reason of the person’s actions in winding up the series if the person complied with this
14 section **[For discussion: Does this paragraph have any meaning without the additional**
15 **language in bold above?]**.

16 **Comment**

17 **Principal Source** – Delaware Statutory Trust Act §3808; Revised Uniform Limited
18 Liability Company Act §§701-02 (2006).

19
20 **[For discussion: What, if anything, of this section should be mandatory?]**
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23 * * *

24 **[For Discussion: (1) Changing all references to “statutory trust” in this article to**
25 **“statutory trust or foreign statutory trust,” and (2) adding language to section 801(3) to**
26 **subject that section to this article.]**