



August 15, 2006

2006-07A  
PTE 91-38

Stephen M. Saxon, Esq.  
Groom Law Group  
1701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-5811

Re: Chevy Chase Trust Company  
Identification No. C-09236

Dear Mr. Saxon:

This is in response to your request for an advisory opinion on behalf of Chevy Chase Trust Company (CCTC) and its affiliates that CCTC will be considered a bank for purposes of Prohibited Transaction Exemption (PTE) 91-38, (56 Fed. Reg. 31966, (July 12, 1991), as corrected 56 Fed. Reg. 59299 (Nov. 25, 1991)) when it acts as trustee of certain collective investment funds established for investment by employee benefit plans.

You represent that CCTC is a trust company incorporated in Maryland and headquartered in Bethesda, Maryland. CCTC is a wholly-owned operating subsidiary of Chevy Chase Bank, F.S.B. You also represent that Chevy Chase Bank, F.S.B. is a federally chartered savings association that has deposit-taking powers. CCTC is a trustee for collective investment funds in which employee benefit plans invest, including the Chevy Chase Trust Company Collective Investment Trust for Employee Benefit Plans - The Real Estate Fund and the IBEWNECA Equity Index Fund (collectively, the Funds).

You further represent that CCTC has exclusive authority and control over all aspects of the management and operation of the assets of each Fund. In addition, you represent that CCTC will at all times remain fully responsible for the management and operation of the Funds under the relevant trust agreements.

CCTC is authorized under the relevant trust agreements to delegate certain investment functions for the Funds to its affiliate, ASB Capital Management, Inc. (ASBCM). ASBCM is an indirectly wholly-owned subsidiary of Chevy Chase Bank, F.S.B. and a registered investment adviser under the Investment Advisers Act of 1940 (the '40 Act). In this regard, CCTC has retained ASBCM to provide investment advisory services to CCTC's collective investment funds pursuant to a Service Agreement dated July 22, 2004. Section 1(a) of the Service Agreement requires that

ASBCM make investment recommendations and decisions in accordance with Fund guidelines. Furthermore, the Service Agreement states that ASBCM will manage these Funds in accordance with the governing Fund documents, the '40 Act, the Securities Exchange Act of 1934, the Internal Revenue Code, the Office of Thrift Supervision (OTS), the Office of Comptroller of the Currency (OCC) and the Employee Retirement Income Security Act.

Under the Service Agreement, CCTC may terminate its relationship with ASBCM at any time without cause upon ninety days advance notice.<sup>1</sup> As noted, CCTC remains fully responsible under the relevant trust agreements for the management and operation of the Funds.

You represent that the OTS regulates federally chartered savings associations and their wholly or partially owned subsidiaries. You represent that the OTS has granted trust and fiduciary powers directly to CCTC. You also represent that a subsidiary that is owned in whole or in part by a savings association is subject to examination and regulation by the OTS to the same extent as that savings association. Thus, CCTC and ASBCM are subject to the regulation of the OTS.

In addition, you represent that the CCTC is subject to regulation by the Office of the Comptroller of the Currency (OCC) in the same manner as national bank trust departments. Specifically, collective investment funds of entities regulated by the OTS must be established and administered in compliance with 12 CFR 9.18. (12 C.F.R. 550.260(b)(1)).

Specifically, you have requested an advisory opinion that the Funds would be considered to be maintained by a bank pursuant to PTE 91-38 (56 Fed. Reg. 31966 (July 12, 1991)). You note that in Advisory Opinion 96-15A, the Department concluded that a trust company which retained its parent company to manage a collective investment fund and whose activities were subject to a state banking commissioner's supervision and examination would be considered a bank for purposes of PTE 91-38. Since the CCTC is not regulated in the same manner as state chartered banks, you have asked whether the Funds would be considered to be maintained by a bank notwithstanding that CCTC delegates certain investment functions for the Funds to its affiliate, ASBCM.

PTE 91-38 permits bank collective investment funds in which employee benefit plans have an interest to engage in certain prohibited transactions with parties in interest with respect to the plans, if the party in interest is not the bank that maintains the fund, or any other fund maintained by the bank or any affiliate of the bank, provided the conditions of the exemption are met. The term "collective investment fund" is defined as a common or collective trust fund or pooled investment fund

---

<sup>1</sup> This assumes that CCTC has the authority to terminate ASBCM as investment adviser.

maintained by a bank or trust company. The terms “bank or trust company” are not defined in PTE 91-38. However, in the preamble to proposed PTE 80-51 (45 Fed. Reg. 44290, 44291 (July 27, 1979)), the class exemption that PTE 91-38 amended and superseded, the Department noted that when collective investment funds are operated by national banks, the funds are subject to the requirements of section 9.18 of Regulation 9 of the OCC, and this regulation and oversight provided a basis on which exemptive relief was granted.

Your representations note that CCTC is regulated by both the OTS and the OCC as a bank or trust company, and it must comply with OCC Regulation 9.18. You further note that CCTC remains fully responsible for the management and operation of the Funds, and is liable under ERISA for the consequences of the investment decisions of its affiliate, ASBCM, with respect to the Funds. Thus, it is the Department’s view that CCTC would be considered a bank, and the Funds would be considered to be maintained by a bank for purposes of PTE 91-38.<sup>2</sup>

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is subject to the provisions of the Procedure including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ivan L. Strasfeld  
Director,  
Office of Exemption Determinations

---

<sup>2</sup> The Department notes that you have not requested an opinion, and the Department expresses no view on whether the decision of CCTC to use its affiliate, ASBCM, to provide investment advisory services to the Funds, and the transactions arising from this arrangement violate section 406 of ERISA; or whether such arrangement or transactions meet the requirements of any statutory or administrative exemption under ERISA.