
CHAPTER: Examination Administration

SECTION: Trust-Only Institution Examinations

Section 090

Background

This Section covers the procedures to be followed for the examination of OTS regulated “special purpose” savings associations and their holding companies that engage only in trust and asset management activities. These institutions, deemed “trust-only” institutions, do not perform commercial or retail banking services by granting credit or taking deposits from the public in the ordinary course of business.

Trust-only institutions generally have only enough nontrust deposits to qualify for federal deposit insurance, leaving only their assets (generally mortgage-backed and/or government securities) to offset their relatively high capital ratios. The capital ratios are relatively high compared to traditional savings associations but are relatively low when off-balance sheet trust activities are considered. Lending is only performed in connection with the exercise of fiduciary powers and therefore, under OTS regulations, trust-only institutions are exempt from the requirements of the Community Reinvestment Act (12 CFR §563e.11).

Even though trust-only institutions are not subject to traditional laws and regulations affecting the standard retail deposit and credit side of banking activities, they are subject to the other banking laws and regulations affecting a typical thrift plus the applicable laws and regulations regarding trust and asset management activities. Due to their special nature, trust-only institutions require an integrated examination approach covering all aspects of their operations including trust and asset management, safety and soundness, consumer compliance, information technology and holding company activities.

In October 1999, OTS issued internal guidance regarding policy for the examinations of “trust-only” institutions. The memorandum provided the framework for ensuring that trust-only institutions received appropriate examination oversight and laid out initial policy for consolidating the trust, safety and soundness and consumer compliance examinations into one examination product. This examination program reaffirms and expands on that policy guidance and provides a framework for a risk-focused coordinated examination approach.

Examination Structure

For trust-only institutions, the trust examination will be the “lead” examination and a trust examiner will be the Examiner-in-Charge (EIC). The frequency of the examinations, however, will be driven by the statutory requirement for safety and soundness examinations unless circumstances warrant a more frequent examination. Furthermore, trust-only institutions with a composite trust rating of “3” should be examined on a 12 month cycle and those with a composite trust rating of “4” or “5” should be examined on a six month cycle. These frequency guidelines are to be used even if the institution otherwise qualifies for an 18 month safety and soundness examination under the statute.

All aspects of the trust-only examination process, which include reviews for safety and soundness, consumer compliance, information technology, and holding company as appropriate, are to be conducted concurrently and coordinated with the trust EIC. The respective examination programs should be appropriately tailored to account for the limited nature of the nontrust activities. If trust examiners have the requisite knowledge and expertise, they should conduct all parts of the examination. If not, examiners with the appropriate expertise or accreditation in the nontrust examination areas should be called upon to complete the appropriate nontrust examination functions.

As the lead EIC, the trust EIC will sign the trust-only Report of Examination (ROE) even though examiners with other accreditations may be assigned to assist on the examination. All examination staff will report their findings and provide their comments to the trust EIC who will consolidate and assemble one examination report covering the entire institution. EIC's who have not yet received their Federal Trust Regulator (FTrR) designation will need to have the ROE reviewed and signed by someone with the FTrR accreditation. Findings from the holding company examination will appear separately in the Holding Company ROE.

Examination Planning and Scoping

Planning for a trust-only examination requires careful thought and preparation when compared to an examination of a traditional trust department. Not only is the EIC responsible for the trust portion of the examination, but he/she is also responsible for the nontrust examination areas and the consolidated report of examination. It is during this planning and scoping process that decisions will be made regarding the overall objectives of the examination, the examination procedures and programs to be used, and personnel requirements.

The overall objective of the examination planning and scoping process is to provide the EIC with a basic understanding of the institution's structure, management, business lines, products, operations and risk profile prior to the examination in order to determine the extent of the examination procedures to be performed and staffing requirements. This will also minimize the amount of time spent on the examination site. The process consists of reviewing any Preliminary Examination Response Kit (PERK) materials received as well as past examination and audit reports, workpapers and other documents, communicating with the institution's management, reviewing risk management and compliance programs, and reviewing policies, procedures, and internal control reports. Any adverse matters contained in examination and audit reports should be noted along with management's response and actions taken. Any significant matters affecting the institution, or material change in operation/risk profile since the prior examination, should also be incorporated into the examination scope.

The trust-only PERK should be used as the primary foundation for the scoping process and the institution should be asked to submit all or part of a completed PERK prior to the on-site portion of the examination. Any information not submitted in advance should be available on-site at the start of the examination. A copy of the specially designed core trust-only PERK (PERK 020), and its supplemental PERKs (PERK 002, PERK 003, PERK 005, PERK 018 and PERK 021), is available on the OTS Intranet under Systems and Exam Documents. The PERK is designed to be comprehensive for all trust and nontrust examination areas covered and is applicable for all institutions. It is designed so that information requests may be added or deleted to accommodate the nature and complexity of the institution's operations. Copies of the PERKs can also be found in the Trust & Asset Management Handbook Section 041 and in the EDS/ROE System on the Intranet.

The EIC is encouraged to conduct interviews with management, the compliance officer, the internal auditor, the general counsel or other responsible staff, as applicable. The purpose is to gain a thorough understanding of how management approaches its responsibilities and integrates its principles into its daily operations, and to identify any changes in risk profile, management systems, organizational structure, etc. The interviews should cover strategic business development and implementation, and address modifications of organizational structure, variations in financial condition, alteration or development of products, internal audit findings, the addition or removal of third party service providers and the availability of employee training programs. You should obtain management's view of the impact of any current economic or legal changes on the institution's operations or product lines. The interview process should be used to confirm,

modify or supplement the EIC's preliminary judgment about the scope of the examination. Proper scoping allows the EIC to formulate initial conclusions about the institution's condition and risk profile, helps to determine areas for expanded or reduced review, and aids in determining examination procedures to be performed. The initial examination scope can be expanded, contracted or otherwise refined as the situation warrants. Once the examination scope has been determined, the examination team members should be briefed on their respective assignments including any cross-training opportunities.

Examination Procedures

The following examination procedures should be followed:

Trust or MOECA Review

The scope for the trust-only examination should be consistent with the MOECA examination procedures and programs established for trust and asset management activities in the Trust & Asset Management Handbook Section 040. The focus of the examination should be on the areas of greatest risk to the institution. It should reflect a "top-down, risk-focused" approach to the examination that shifts the focus away from individual transactions to a more comprehensive review of the institution's policies, procedures, controls, monitoring and risk management programs. Supervision by Risk is described in Section 030 of the handbook. An evaluation of the integrity of an institution's internal programs, systems and controls should be made through testing, as warranted. The examiner should use sound judgment to ensure that the depth of review is adequate but not excessive.

Examination programs in the Trust & Asset Management Handbook are designed to assist the examiner in focusing on the level of review necessary. Not all programs will be applicable to each examination and not all procedures will be needed. The optional topic questions following the programs are intended to serve as guides and reminders.

Safety and Soundness or CAMELS Review

Due to the limited nature of the nontrust activities in a trust-only institution, the safety and soundness examination scope should be appropriately tailored to account for specific areas of risk. It should recognize that trust-only institutions do not make loans (except through their fiduciary activities), typically have only one deposit for federal deposit insurance qualifications, generally invest in low risk mortgage backed and government securities, and have high capital ratios compared to traditional thrifts.

The risk-focused examination procedures set forth in New Directions Bulletin 02-12 dated July 24, 2002, and trust-only CAMELS work programs, should be followed and may be supplemented by additional work programs from the Thrift Activities Handbook if appropriate. Work programs should only be performed to the extent they do not duplicate efforts in the trust portion of the examination. Management or earnings issues should be reflected in the management and earnings comments under the respective MOECA components of the ROE. Any CAMELS comments not reflected in the management and earnings section should appear under the CAMELS Overview section of the ROE. If a point needs to be made to tie the management and earnings comments into the safety and soundness conclusion, additional comments pertaining to these two components can also be incorporated into the CAMELS Overview section.

Consumer Compliance Review

The consumer compliance scope will also be limited due to the lack of credit and deposit related products. The review, although more limited than a full consumer compliance examination, remains an integral part of

the trust-only examination process. Primary emphasis should be placed on assessing the effectiveness of the institution's self-evaluations, internal controls and compliance management programs as opposed to transactional analysis.

The following core laws and regulations should always be included on every trust-only examination:

- Bank Secrecy Act (BSA) and Anti-Money Laundering (AML)/U.S. Patriot Act/Office of Foreign Assets Control (OFAC)
- Gramm-Leach-Bliley Act and Fair Credit Reporting Act Privacy

Other optional subjects include the following, depending on the prior and current examination scope and findings:

- Bank Protection Act
- The Right to Financial Privacy Act
- Electronic Fund Transfer Act
- Expedited Funds Availability Act
- Advertising
- Truth in Lending

The Consumer Compliance section of the trust-only examination report should reflect that a BSA/AML/OFAC and Privacy of Consumer Information review was performed along with any other optional consumer compliance reviews and their results. The section should also note that the trust-only institution has not changed its products and services that would subject it to coverage under the CRA. Any violations of consumer compliance laws or regulations should be entered into the EDS system. Guidance and examination procedures can be found in the Compliance Activities Handbook or in the Compliance Policy folder on the Intranet.

Technology Risk Controls Review

The Technology Risk Controls program in Section 341 of the OTS Thrift Activities Handbook should be performed as part of the examination process unless the thrift has significant proprietary information technology systems. The program should be completed by an examiner who has received specialized training in evaluating the controls that mitigate risks associated with the electronic data processing systems used by institutions.

IT examiners should conduct a separate examination if the institution has a proprietary system for its trust and asset management activities. The IT Regional Manager should be contacted to discuss any IT examination(s) performed since the previous trust-only examination and the results of that discussion should be noted in the trust-only institution examination workpapers.

The findings and results of the current technology risk control examination should be noted in the trust-only institution's ROE as well as in the workpapers. Any report comments should be included in the MOECA component section of the ROE under Operations, Internal Controls, Information Technology, and Audits in the Significant Regulatory Findings section.

Holding Company Review

The holding company examination should be conducted concurrently with the trust-only examination. The scope will be risk-focused and based on the unique circumstances of the holding company enterprise. Generally, only one holding company examination will be performed, even if multiple tiers of indirect ownership exist. The results of the examination are to be documented in a separate holding company examination report. A composite rating will be assigned for all holding company examinations (Category I and Category II). For complex or higher risk holding company enterprises (Category II), specific CORE component ratings are also assigned. The EIC has the discretion to assign components ratings with Category I examinations. The examiner should consult the Holding Companies regulatory handbook for administrative and examination procedures and programs.

Examination Administration

The new EDS/ROE is now available to all ECEF users. To initiate the process, Regional and Washington ECEF users may access the new EDS/ROE from the ECEF Docket Selector or from EDS/ROE under Systems on the Intranet.

The EDS/ROE system collects and stores examination data and reports of examination (ROEs) for all entities examined and supervised by the OTS. The new EDS/ROE system replaces both the EDS accessed via the legacy TIM system and the ROE client application on the notebooks and desktops. The system allows greater flexibility in the examination administration process and in creating and making changes to new and existing exam types and report shells.

Along with the changes made to the ROE administrative process, the following changes were made to the examination codes: (1) Special and Targeted examination type codes have been deleted and replaced by one examination type, "Limited". (2) Only one examination code, Type 30, will be used for all eligibility examinations, no matter what type of eligibility examination is conducted; and, (3) Holding company examination codes are now numbered not lettered. Of particular importance for trust examinations is that the new EDS/ROE has specific examination codes for regular and limited trust-only institution examinations. Traditional trust examination codes will remain the same except for a numbering change for limited examination types. Type 73 will replace Type 72.

MOECA component ratings for all trust examinations will now be captured under the Ratings tab on the EDS/ROE main menu. Previously, MOECA component ratings were not captured. The component ratings will be mandatory for all regular trust-only examinations. The component ratings will be optional for limited trust-only examinations. In addition to capturing the MOECA ratings under the Ratings tab, a new box containing a question on the institution's technology risk controls has been added. The examiner should respond appropriately.

Information on any consumer compliance violations noted during the examination should be completed under the Violations tab on the EDS/ROE main menu.

Examination staff should refer to the July 28, 2003 Examination Data System/Report of Examination (EDS/ROE) Users Guide and their respective regional information technology staff for detailed procedures on downloading, creating, editing, uploading and transferring examination shells and documents.

Reg Plan Verification

The EIC should verify that the trust information in the Reg Plan system within TIMS is complete and accurate. Ensure that the **type** of trust powers and corresponding data is complete and accurate.

Examination Billing

Examiner and office time should be allocated to the various activity codes of the appropriate eligibility, trust, trust-only or holding company examination type. The greatest amount of examination-related time spent on the trust-only examination should be allocated to trust examination code 360, since the trust portion of the examination will consume the majority of the examination time. All other examination activity time should be distributed appropriately between safety and soundness and consumer compliance.

Holding company examiner and office time should be allocated to holding company activity codes. The cost of holding company examinations is assessed against and paid by the holding company.

A summary of the last billing period processed and the total calculated billing amount by region and caseload can be found on the OTS Intranet under the Holding Company & Trust Billing System.

Trust Profile

The Trust Profile is to be a perpetual document, utilized internally by OTS management and examiners, for national and regional reference purposes. The Profile should be reviewed and updated at least annually and certain sections, such as the Supervisory and/or Significant Event Strategy, should be subject to a more frequent review and update. At a minimum, the Profile should be updated at the conclusion of each trust and asset management examination.

The Profile should include pertinent supervisory, examination, and other information. It should also include a risk management assessment of the quantity, quality and direction of various risks based on the level and frequency of examinations and monitoring conducted. The Profile is a snapshot picture of a trust department or trust-only entity's condition and resulting risk assessment at any given time.

Much of the information contained within the Profile can be extracted from examination reports, institution documents, PERK materials, or direct contact with an institution's management. The information should be succinct and not superfluous. The Profile should not attempt to restate examination information but should be used to reference and summarize that existing information.

The documents on the guidance for completing the Profile as well as the template to be used are located on the OTS Intranet's ECEF under each individual region and Profile heading.

ROE Preparation Guidelines

The EIC will use the trust-only ROE shell to prepare one report of examination that includes all assigned ratings and incorporates examination findings from the trust, safety & soundness, and consumer compliance reviews. As indicated previously, the holding company examination report and rating will be issued under separate cover. The technology risk controls rating will be incorporated into the Operations, Internal Controls, Information Technology, and Auditing ("O") component rating under MOECA, and any respective narrative will appear in this section as well.

Cover Page

Using the “inf” icon, insert the appropriate information.

All dates should be in month/day/year format, using four digits for the year.

Director Signature Page

- The director’s names should be inserted beneath the respective signature line, beginning with their first name or initial.
- The name of the board’s chairperson should appear first, followed by the vice chair and other board officers. If they are directors, the names of the president, CEO and other officers should follow next.
- The names of the remaining directors should follow in alphabetical order, with any managing officers considered decision makers completing the list.
- Add additional lines as needed and delete all unused lines.

Examination Overview

The Examination Overview section begins with a matrix identifying the institution’s historical examination ratings for trust, safety and soundness and consumer compliance. It shows the current and prior two trust, safety & soundness and compliance examination composite and component ratings. The following procedures should be followed for the Examination Matrix:

Examination Matrix

- The current trust-only examination date should be inserted in the appropriate column.
- The dates of the two previous trust-only examinations should be inserted in their respective columns, with the most recent examination date first.
- The current and previous trust-only examination composite and component ratings should be inserted in the appropriate columns.
- Any missing component and composite ratings for the current and two previous safety and soundness and consumer compliance should be inserted.
- The trust and safety and soundness component ratings for Management and Earnings should be identical.
- In the event there have not been two previous examinations, “N/A” should be inserted in the appropriate column. In the event a component rating is not rated, “N/R” should be inserted.

The Examination Overview narrative section contains the following three subsections: Scope, Executive Summary, and Matters Requiring Board or Management Attention. When taken in its entirety, the section should provide a clear picture of OTS’s assessment of the institution.

Scope

The scope section is designed to provide the reader with a brief overview of the extent of the examination procedures performed. It should note the rating areas covered, the “as of date” of the examination, and whether the examination included concurrent holding company, information technology or other

examinations. A brief overview of the institution's operations may also be appropriate. If the examination was conducted jointly or concurrently with other regulatory agencies (this could include other federal agency or state examinations), this should be noted as well.

Executive Summary

This section is intended to be a **concise** summary of the examination findings and overall assessment of the institution based on the examination findings. It is designed to give the reader a picture of the institution's overall condition as reflected in the composite ratings assigned. Brief summaries of the most significant findings, deficiencies and problems should be included in this section. An accounting of overall trends, both positive and negative, should be incorporated as appropriate. The reader should be directed to the Significant Regulatory Findings section of the report for additional information and a more thorough discussion of any major concerns or violations of applicable law.

This section should conclude by describing with whom the examination findings were discussed and the date of the discussion. Management's response, if any, to the examination findings should also be noted.

Matters Requiring Board or Management Attention

This section sets out actions that must be taken by either the board of directors or management. Each action or recommendation should be listed under the appropriate component subheading with the most important or critical action or recommendation coming first and then in descending order of importance. Generally, if all matters must be attended to by a specific date, that date should be set forth in the transmittal letter. In the event the institution is given several separate dates to comply with various problems or deficiencies, the dates can be contained in this section.

Significant Regulatory Findings (Narrative Sections)

The Significant Regulatory Findings narrative for each of the MOECA, CAMELS and Consumer Compliance sections should contain the following four subsections:

1. Component Rating
2. Conclusion
3. Comments and Supporting Analysis
4. Corrective Actions

In the Significant Regulatory Findings section, the most important regulatory issues and violations that warrant corrective action (as noted in the section "Matters Requiring Board or Management Attention") should be explained in sufficient detail to support the component rating and allow the reader to better understand the concern(s) and take appropriate action. The specific concerns should be identified and concisely explained and corrective action should be recommended. A long narrative discussing each component area is not necessary and should be avoided except in unusual circumstances. Such information can be summarized in the examination workpapers.

If no critical issues were noted in a component during the examination, the examiner can eliminate the individual comment and summarize the conclusion in the Executive Summary section. All individual subsection headings should be removed if not used. A component rating is always assigned for each component area reviewed; however, if an individual comment was eliminated due to minimal findings, the

rating can appear in the matrix under the Examination Conclusions and Comments instead of in the respective component area.

The Management section should be an overall evaluation of management. There will be only one management comment and the section should reflect management's oversight of its fiduciary and other thrift activities. The comment should take into consideration the effectiveness of the institutions management systems, policies and procedures, internal controls, audits, consumer compliance and risk management processes, as well as the overall financial performance of the thrift. The Management component ratings assigned by the trust and safety and soundness examination rating factors should be identical. When assigning the management component rating, the examiner should also take into consideration an adverse consumer compliance rating. For instance, if consumer compliance is assigned a "3" rating, than the management component ratings assigned can be no higher than a "2".

The Earnings section should focus on the level, stability, quality and trend of earnings in relation to the ability to provide for adequate capital. There will be only one earnings comment and the Earnings section will reflect the component rating assigned by both the trust and safety and soundness portions of the examination. Because a trust-only institution is identical to a nondeposit trust company, an Earnings rating will be assigned to all trust-only institutions.

The remaining MOECA components: Operations, Internal Controls, Information Technology & Audit, Compliance and Asset Administration will each have their own respective section for comment and component rating.

The remainder of the CAMELS components: Asset Quality, Capital, Liquidity and Sensitivity will be addressed under the report heading of CAMELS Overview. Depending on the examination findings, the section comments can be as brief or as in-depth as needed to summarize the examination findings. An overall composite rating will be assigned to the CAMELS Overview section. The individual component ratings should be inserted in the rating matrix at the front of the examination report along with the overall composite CAMELS rating.

The Consumer Compliance section should focus on issues that may arise involving high-risk or sensitivity. USA Patriot Act, Bank Secrecy Act and OFAC reviews are mandatory and the section comment should reflect that these areas were reviewed and include examination findings. Relevant sensitivity-based laws and regulations should also be reviewed. Examiners should ensure that the italicized scope paragraph in the header lists the appropriate regulations reviewed. The section comment should also note whether the trust-only institution has changed its products and services that would subject it to coverage under the CRA. A consumer compliance composite rating should be assigned.

Financial and Other Data Section

The ROE will be populated with the most recent Thrift Financial Report financial data and the examiner should review and verify the accuracy of the data, updating as appropriate. Data can be updated by reviewing the institution's most recent TFR. The following is a list of the various schedules available. Only the Directors, Senior Executive Officers, and Attorneys schedule is mandatory. All other schedules are optional and can be deleted from the report if deemed unnecessary.

Comparative Statement of Financial Condition

Analysis of Earnings

Capital Calculations

Directors, Senior Executive Officers, and Attorneys (Mandatory)

Compliance with Enforcement Actions

Violations of Laws and Regulations

Financial Reporting Errors

Principal Operating Committees

Subordinate Organizations

Miscellaneous