

BEFORE THE WYOMING STATE BANKING BOARD

STATE OF WYOMING

IN THE MATTER OF:)
)
EXETER TRUST COMPANY, LLC,)
)
 Petitioner)
v.) OAH Docket Number 18-184-021
)
WYOMING STATE BANKING BOARD,)
)
 Respondent)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

THIS MATTER came before the Wyoming State Banking Board (Board) on January 30, 2019, for contested case evidentiary hearing. Applicant Exeter Trust Company appeared by and through counsel Gregory C. Dyekman. The Wyoming Department of Audit, Division of Banking, appeared by and through counsel Assistant Attorney General Devin Kenney. The Board was represented by Senior Assistant Attorney General D. David DeWald. Exeter Trust Company presented evidence through witnesses William L. Exeter, Anton R. Hammock, and Maureen H. Brown, as well as Exhibits 1 through 15. The State Banking Commissioner presented his investigation through the testimony of Fred Rife, Deputy Commissioner, as well as Commissioner's Exhibit 1. The Board previously received the parties' disclosure statements, and the aforementioned exhibits into evidence. A court reporter prepared a transcript of the proceeding and finalized the transcript on February 1, 2019. The Board received a copy of this transcript on or about February 4, 2019. Board Chairman Thomas Bass did not participate in the Board's examination or deliberation. A quorum of the Board deliberated on the application on February 21, 2019, and the record was officially closed on that date. Based upon the evidence and argument presented, the Board finds and concludes as follows:

I. JURISDICTION

Hearings for charter applications are conducted as contested cases in accordance with the Wyoming Administrative Procedure Act, WYO. STAT. ANN. § 16-3-101 through 115, WYO. STAT. ANN. § 13-2-209, and the Wyoming State Banking Board Rules and Regulations, Chapter 2, §§ 11 through 34 (Board Rules). Therefore, the Board has jurisdiction to conduct the administrative hearing in this matter and to make a final decision. WYO. STAT. ANN. § 13-2-212.

II. STATEMENT OF THE CASE

Exeter Trust Company seeks approval of its application to receive a charter to operate a trust company business in Wyoming. The State Banking Commissioner performed a statutory investigation and examination and recommended approval of the application. The Board must determine whether to approve, conditionally approve, or disapprove the charter application after ascertaining the factors set forth in WYO. STAT. ANN. § 13-2-212(a).

III. ISSUE PRESENTED

The sole issue in this case is whether Exeter Trust Company has proven, by a preponderance of the evidence, that it has met the statutory requirements for approval of its application to operate a trust company in Wyoming.

IV. FINDINGS OF FACT

1. On October 2, 2018, the Wyoming Department of Audit, Division of Banking (Division) received an Application for Charter to operate a trust company by the name of Exeter Trust Company. (Commn. Ex. 1 at 1). On November 1, 2018, the Division of Banking accepted the application for filing. *Id.* The application was set for public hearing on January 30, 2019. (Order Setting Prehearing Conf.). The Board deliberated on the application via telephone conference open to the public on February 21, 2019. (Feb. 21, 2019 Trans. of Proc. at 1).

2. Williams L. Exeter is the incorporator Exeter Trust Company. (Commn. Ex. 1 at 1). The Exeter Group, LLC, is Exeter Trust Company's sole shareholder. *Id.* The Exeter Group of Companies maintains its national corporate headquarters in San Diego, California, and has regional offices in Los Angeles, Seattle, Phoenix, and Fort Lauderdale. *Id.* The Exeter Group of Companies provides tax-deferred financial and fiduciary services for the acquisition, holding, investment, sale, exchange, and disposition of real estate and real estate-related assets. *Id.*

3. Exeter Trust Company plans to provide its services to attract and administer 1031 exchange transactions. (Commn. Ex. 1 at 1). These types of transactions involve the exchange of property held for productive use or investment under Title 23 of the Internal Revenue Code. *See* 26 U.S.C. § 1031. The trust company intends to serve as trustee of qualified trust accounts for real property tax-deferred transactions under Section 1031, and to serve as custodian of self-directed individual retirement accounts with an emphasis on alternative non-traded real estate

investments. *Id.* The trust company's plan will enable The Exeter Group of Companies to expand and diversify through an expanded client base and referral sources. *Id.* The Exeter Group is recognized nationally as one of the top companies assisting clients with 1031 exchanges. *Id.* at 2. The trust company expects cross-selling opportunities between existing clients, referral sources, product and services. *Id.* at 1.

4. Pending approval of its application, Exeter Trust Company will be chartered as non-depository Wyoming trust company with an address of 205 Storey Boulevard, Suite 200, Cheyenne, Wyoming. (Commn. Ex. 1 at 1).

5. Williams L. Exeter, 404 Camino del Rio South, Suite 600, San Diego, California, is the founder, majority owner, President, and Chief Executive Officer of The Exeter Group, LLC, and will be a Director of Exeter Trust Company. (Commn. Ex. 1 at 5; Jan. 30, 2019 Trans. of Proc. at 10). Mr. Exeter holds a degree in accounting, and has decades of experience in various positions within financial institutions, including commercial banking, savings and loan, and trust companies. (Jan. 30, 2019 Trans. of Proc. at 11–13).

6. Anton R. Hammock, 205 Storey Boulevard, Suite 200, Cheyenne, Wyoming, is a proposed Director, Chief Trust Officer, Trust Operations Manager, and Senior Vice President of Exeter Trust Company. (Jan. 30, 2019 Trans. of Proc. at 33–34). Mr. Hammock holds a bachelor's degree with an emphasis on management and business administration from DePaul University. *Id.* at 33. Mr. Hammock is a Certified Securities Operational Professional, Certified Trust and Financial Advisor, Certified Risk Professional, and a Certified Control Specialist. *Id.* Mr. Hammock has held various positions in trust fiduciary businesses. *Id.* at 34.

7. Maureen H. Brown, 404 Camino del Rio South, Suite 600, San Diego, California, is the Senior Vice President and Manager of the exchange administration departments for The Exeter Group, and she is a proposed Director and Chief Financial Officer of Exeter Trust Company. (Jan. 30, 2019 Trans. of Proc. at 44). Ms. Brown has 43 years of administrative professional background, including 16 years of experience in the 1031 exchange industry. *Id.*

8. David M. Peterson, 7505 West 15th Street, Sioux Falls, South Dakota, is a proposed Director of Exeter Trust Company. (Commn. Ex. 1 at 5, 7–8). Mr. Peterson is a licensed attorney in South Dakota, and has experience working as a state trust company examiner and as a trust and compliance officer. *Id.* Mr. Peterson owns a trust company consulting firm. *Id.*

9. Douglas Edward Stevens, 1816 Cracker Barrel Lane, Spearfish, South Dakota, is a proposed Director of Exeter Trust Company. (Commn. Ex. 1 at 5, 8). Mr. Stevens is an attorney licensed in Wyoming and South Dakota, where he practices civil law. *Id.*

10. Charles A. Jensen, 2334 26th Street, Santa Monica, California, is a proposed Director of Exeter Trust Company. (Commn. Ex. 1 at 8). Mr. Jensen has experience as an external wholesaler of Real Estate Investment Trusts and 1031 Exchanges. *Id.* He holds a Bachelor of Interdisciplinary Studies from Arizona State University. *Id.*

11. Exeter Trust Company's parent company will utilize its cash reserves to contribute an initial capital investment in the amount of \$1,100,000 to the trust company. (Commn. Ex. 1 at 3). Of the amount invested, \$100,000 will be held as excess operating capital

and, \$1,000,000 will be pledged to the Division. *Id.* If total equity capital should fall below \$1,000,000, the Board of Directors and its shareholders will take the necessary steps to inject additional equity capital to bring the position to a satisfactory level under Wyoming Statute. *Id.*

12. Exeter Trust Company presented a three year proforma profit and loss statement in its business plan submitted to the Division, projecting profits and losses for its first three years of proposed operation. (Ex. 1; Commn. Ex. 1 at 3). Exeter Trust Company projects to have first year total assets under management of \$156,000,000; second year total assets under management of \$244,000,000; and third year total assets under management of \$317,000,000. *Id.* The prospective trust company projects net profits after taxes in the first year of \$245,000; second year net profits after taxes of \$860,000; and third year net profits after taxes at \$1,533,000. *Id.*

13. Deputy State Banking Commissioner Fred Rife conducted an investigation and examination of the proposed trust company. (Commn. Ex. 1). Mr. Rife considered the six factors required by WYO. STAT. ANN. § 13-2-211 when he examined and investigated Exeter Trust Company and prepared his report. *Id.* In conducting his investigation, among other things, Mr. Rife interviewed proposed officers and directors, solicited and received comments from personal and professional references of the proposed officers and directors, solicited comments from Cheyenne area trust companies and banks, and solicited comments from various financial institution regulators. *Id.* at 4.

14. After investigation and examination, Mr. Rife found the organizers, proposed directors, and officers of Exeter Trust Company have the character, reputation, financial responsibility, and financial experience to manage the proposed trust company in a safe and

sound manner. (Ex. 1 at 3). Mr. Rife also determined the organizers, proposed directors, and officers of Exeter Trust Company appear to enjoy good reputations, are considered capable and responsible, and are of satisfactory financial standing. *Id.* at 3–5. Mr. Rife further found that the proposed organizers, proposed directors, and executive officers possess significant experience and expertise in the area the trust company will operate, and appear to be capable of carrying out the trust company’s plan. *Id.* at 3. Mr. Rife also determined that the organizers, proposed directors, and officers have attained professional industry designations and various certifications that are complementary in the areas of bank and trust company management. *Id.*

15. Mr. Rife investigated and examined the need in the community where the proposed trust company would be located, the community’s ability to support the proposed institution, how the trust company may impact existing financial institutions, and the opportunity for profitable employment of financial institution funds. (Ex. 1 at 6). Mr. Rife determined that Exeter Trust Company would positively impact Laramie County, Wyoming, noting that there appeared to be room within Laramie County for a trust company specializing in 1031 exchange services and self-directed retirement account services, focusing on alternative investments. *Id.* Mr. Rife determined that Exeter Trust Company was unlikely to directly compete with any of the financial institutions located and operating within Laramie County, noting that the existing institutions compete mainly for local business, and the proposed trust company sees its trade area as much broader than Wyoming’s boundaries, given its parent company’s overall structure and its specialization in the 1031 exchange and self-directed retirement account services that has emphasis in alternative investments. *Id.* Further, Mr. Rife determined that the proposed trust

company's presence would positively impact the Cheyenne, Wyoming community as the company employs employees, leases commercial office space, and forms additional Wyoming limited liability companies for use in the acquisition and holding of legal title to real estate. *Id.* at 2. Mr. Rife determined the proposed trust company can contribute to the community's economy and operate profitably without creating anti-trust competition in the community. *Id.* at 4.

16. Mr. Rife examined the proposed organizational structure, operational controls, fidelity coverage, expenses in connection with the proposal, premises and fixed asset investments, capital structure, and proposed plan, and determined they all appeared reasonable with the likelihood of resulting in a safe and sound financial institution. (Ex. 1 at 6).

17. Mr. Rife determined that Exeter Trust Company appears to have complied with all applicable Wyoming banking statutes. (Ex. 1 at 4).

18. Mr. Rife concluded there are no other financial institutions transacting business in Laramie County or the State of Wyoming with a name similar to Exeter Trust Company. (Commn. Ex. 1 at 14).

V. CONCLUSIONS OF LAW

19. Upon receiving an application for charter and other required documents, the State Banking Commissioner is required to investigate and examine the following: (i) the character, reputation, financial standing and ability of the organizers; (ii) the character, financial responsibility, banking or savings and loan or other financial experience and business qualifications of those proposed as officers; (iii) the character and standing in the community and

state of those proposed as directors, stockholders or owners; (iv) the need in the community where the institution would be located giving particular consideration to the adequacy of existing financial facilities and the effect that the proposed institution would have upon existing financial institutions in the community; (v) the ability of the community to support the proposed institution, including existing competition, the economic history of the community and the opportunity for profitable employment of financial institution funds; and (vi) such other facts and circumstances bearing on the proposed financial institution as the banking commissioner may deem relevant. WYO. STAT. ANN. § 13-2-211(a).

20. The State Banking Commissioner submits these findings verbally and in writing at the public hearing on the application and is subject to cross-examination by any interested party. WYO. STAT. ANN. § 13-2-211(b). No relevant information is excluded by the Board as hearsay. *Id.*

21. Upon conclusion of the hearing, the Board reviews the application and determines whether to approve, conditionally approve or disapprove an application. WYO. STAT. ANN. § 13-2-212(a). The Board has ninety (90) days after receipt of the transcript of the public hearing to make its determination. *Id.* The Board may not approve an application until it has ascertained to its satisfaction the following: (i) the public need and convenience will be promoted by the establishment of the proposed financial institution; (ii) conditions in the community in which the proposed financial institution would transact business afford reasonable promise of successful operation; (iii) the financial institution is being formed for no other purpose than the legitimate objects contemplated by the laws of the state; (iv) the proposed capital and surplus are not less

than the required minimum and are adequate in light of current and prospective conditions; (v) the proposed officers and directors have sufficient experience, ability and standing to afford reasonable promise of successful operation; (vi) the name of the proposed financial institution does not resemble so closely as to cause confusion the name of any other financial institution transacting business in the county; and (vii) the applicants have complied with all applicable provisions of law. *Id.*

22. The evidence shows public need and convenience will be promoted by the establishment of Exeter Trust Company. The Board finds that the “public need,” as “measured by the potential for profitable operation of an additional [institution] without endangering the existence of a present [institution,]” *First National Bank of Worland v. Fin. Instit. Bd.*, 616 P.2d 787, 798 (Wyo. 1980), would be promoted because Exeter Trust Company intends to serve as trustee of qualified trust accounts for tax deferred transactions under Section 1031, and to serve as custodian of self-directed individual retirement accounts with an emphasis on alternative non-traded real estate investments in order to further The Exeter Group’s national goals and to fill a perceived niche in the market. (Findings at ¶¶ 3, 15). Furthermore, Exeter Trust Company would not have a material effect on existing financial institutions providing trust services in Laramie County, because the proposed trust company will not be exclusively reliant on community account holders, but will seek to exploit The Exeter Group’s national presence in markets across the county to leverage the trust company’s potential in Cheyenne. *Id.* at ¶¶ 3, 15. Accordingly, Exeter Trust Company will not endanger the existence of existing institutions.

23. The evidence shows that conditions in the City of Cheyenne and Laramie County afford Exeter Trust Company a reasonable promise of successful operation. The Board finds that the City of Cheyenne and Laramie County can support a trust company with an immaterial impact on existing financial institutions. (Findings at ¶ 15). The Board also finds that Exeter Trust Company is likely to successfully market its services to a preexisting base of The Exeter Group clients. *Id.* at ¶¶ 3, 12, 15. Based on the uncontested proforma income projection for the first three years of proposed operation, along with the investigation performed by Mr. Rife, the proposed institution is likely to have positive net profits in each of its first three years of operation, thus providing reasonable assurance of successful operation. *Id.* at ¶¶ 11–12, 15. The Board agrees with Mr. Rife that Exeter Trust Company’s organizational structure, operational controls, fidelity coverage, expenses in connection with the proposal, premises and fixed asset investments, capital structure, and proposed business plan appear reasonable. *Id.* at ¶ 16. The Board therefore determines that it is likely the proposed trust company would be a safe and sound financial institution with a reasonable promise of successful operation.

24. The evidence shows that Exeter Trust Company is being formed for no other purpose than the legitimate objects contemplated by the laws of Wyoming. The Board concludes that the trust company is formed to provide specialized services in the 1031 exchange market, and self-directed retirement account services with an emphasis in alternative investments. (Findings at ¶ 15). Therefore, Exeter Trust Company has proven that the company is being formed for legitimate trust company purposes.

25. The evidence shows that Exeter Trust Company's proposed capital and surplus are not less than the required statutory minimum, and are adequate in light of current and prospective conditions. Exeter Trust Company's parent company will make an initial capital investment in the amount of \$1,100,000 to the trust company, of which \$100,000 will be held as excess operating capital and \$1,000,000 will be pledged to the Division. (Findings at ¶ 11). Therefore, the Board determines that the capital structure meets the minimum statutory requirements set forth in WYO. STAT. ANN. § 13-2-301 and appears to be adequate in light of current and prospective conditions.

26. Mr. Rife found, and the Board agrees, that the proposed officers and directors to have the character, reputation, financial responsibility, and financial experience to manage the proposed trust company in a safe and sound manner. (Findings at ¶ 13-14). The organizers, proposed directors and officers of the proposed institution appear to enjoy good reputations, are considered capable and responsible, and are of satisfactory financial standing. *Id.* at 14. The proposed directors and executive officers possess the experience, skills, education, and training to effectively operate the institution in a safe and sound manner. *Id.* at 14, 16. The Board agrees with Mr. Rife that the proposed organizers, officers, and directors have sufficient experience, ability, and standing to afford reasonable promise of successful operation.

27. The Board concludes the name, "Exeter Trust Company" does not resemble so closely as to cause confusion the name of any other financial institution transacting business in the City of Cheyenne or Laramie County. (Findings at ¶ 18).

28. The evidence shows, and the Board concludes, that Exeter Trusts Company has complied with all applicable provisions of law. (Findings at ¶ 17).

29. Based upon an evaluation of all the evidence presented at the hearing and upon consideration of the record as a whole and pursuant to the authority vested in the Board by WYO. STAT. ANN. § 13-2-212, the Board finds that the charter application should be **granted**.

VI. DECISION

Pursuant to the authority vested in the Wyoming State Banking Board by WYO. STAT. ANN. § 13-2-212, the Board hereby **APPROVES** the charter application of the proposed Exeter Trust Company to operate a trust company in Wyoming.

VII. ORDER

IT IS THEREFORE ORDERED that the Application for Charter to Operate a Trust Company by Exeter Trust Company is hereby **GRANTED**.

DATED this 5th day of March, 2019.

WYOMING STATE BANKING BOARD



Thomas Bass, Chairman

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of this document were served upon the parties by mailing same, postage prepaid, on the 5th day of March, 2019, addressed to the following:

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