

FOR IMMEDIATE RELEASE
April 12, 2012

COURT OF CHANCERY ANNOUNCES
RULES TO IMPROVE THE INTEGRITY OF THE PROCESS FOR
APPROVING CONSENT APPLICATIONS TO MODIFY TRUSTS

The Court of Chancery has adopted new Rules, effective May 1, 2012, to improve its ability to protect the interests of minor and unborn beneficiaries of trusts, and to ensure that the intentions of the creators of trusts are not altered without proper legal basis. Rules 100 to 103 pertain to proceedings to modify trusts by consent. In these proceedings, living adult beneficiaries seek modifications to trust agreements, often when the person who created the trust is deceased. Adult beneficiaries also are permitted to consent to the modifications on behalf of minor and unborn beneficiaries, but only to the extent no conflict of interest exists. Because a consent petition is one presented without the benefit of an adversarial record, it is critical that the Court receive full information about the intentions of the creator of the trust, the changes proposed, how the proposed changes would affect the interests of the beneficiaries of the trust, whether the changes can be approved by this Court or require the approval of another state, and whether the adult beneficiaries are in a position to fairly and impartially represent the interests of minor and unborn beneficiaries.

Specifically, Rule 100 requires the beneficiaries seeking the modification to disclose factual information that will help the Court evaluate whether it has jurisdiction over the trust, whether the petitioning parties have conflicts of interest with the beneficiaries, and, ultimately, whether the relief sought in the petition should be granted. The amendment to Rule 101 requires an appendix of exhibits to be filed with the consent petition, which will enable the Court to better understand the history of the trust and the effect the changes may have on the trust's beneficiaries and the structure established by the trust's creator. The amendment to Rule 102 standardizes the form of consents to relief sought in the petition. The amendment to Rule 103 requires persons who purport to represent beneficiaries under 12 *Del. C.* § 3547 to certify that they do not have a material conflict of interest with the person represented, and requires the petitioner's attorneys to certify to the best of their knowledge that no such conflict exists. Taken together, these amendments add important integrity to the process for presenting consent petitions by making sure that the Court is presented with a full record to determine whether the proposed modifications are consistent with the intentions of the trust creator, the policy interests of other states with a connection to the trust, and, importantly, the interests of minor and unborn beneficiaries.

FOR FURTHER INFORMATION, PLEASE CONTACT
Karlis Johnson
Court of Chancery
302-255-0550

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENTS TO COURT OF CHANCERY RULES, SECTION XII,
RULE 100, RULE 101, RULE 102, AND RULE 103.

This 12th day of April, 2012, IT IS HEREBY ORDERED that Court of Chancery

Rules, Section XII, Rule 100 shall be amended by substituting in its entirety the following language for existing Section XII, Rule 100, effective May 1, 2012.

XII. PROCEEDINGS TO MODIFY TRUSTS BY CONSENT

Rule 100. Contents of a petition to modify a trust by consent.

(a) A party seeking to modify a trust by consent shall file a petition with the Register in Chancery.

(b) Every petition to modify a trust by consent shall address each of the following matters:

(1) The factual circumstances under which the trust was settled or created, the reasons for its settlement, how the trust has operated since its settlement including any material amendments since its settlement, and the events leading to the relief sought in the petition;

(2) Whether the trust was settled or created in a state other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware; and

(3) The basis for this Court's jurisdiction over the trust and, to the extent jurisdiction is based on Delaware being the principal place of administration, a description of the administrative tasks and duties carried out by the Delaware trustee or other Delaware fiduciaries and a comparison of those tasks and duties to those entrusted to fiduciaries or proposed fiduciaries domiciled outside Delaware.

(c) Every petition to modify a trust by consent shall address each of the following matters with particularity:

(1) The nature and status of any filed, pending, or threatened action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or regulatory, relating to the subject matter of the trust, or among any of the petitioners or trust beneficiaries;

(2) Any prior determination or judgment on the merits in any action, suit, or proceeding involving any living person who is either a petitioner or a person who will serve as a fiduciary if the relief requested in the petition is granted, resulting in a criminal conviction, an adjudicated breach of the fiduciary duty of loyalty, or a determination reflecting on the honesty or integrity of such person;

(3) The nature of the relief sought in the petition and the reasons why such relief is being sought;

(4) The role(s) of the petitioner(s) in the existing trust (whether beneficiary, fiduciary, adviser, protector, etc.) and the proposed role(s) of the petitioner(s) in the trust if the relief sought in the petition is granted;

(5) How the proposed relief will affect the interests of current, vested future, and contingent beneficiaries;

(6) Any personal interest of any petitioner, or person who will serve as a fiduciary if the relief requested in the petition is granted, creating an actual or potential conflict between the interests of such person and the interests of the current, vested future, or contingent beneficiaries relating to the relief requested in the petition, including but not limited to conflicts relating to differing investment horizons, an interest in present income versus capital growth, or any limitation on, exculpation from, or indemnification for any existing or potential future liability;

(7) Whether any petitioner or beneficiary has a familial, personal, or financial relationship with any person who, as a result of the relief requested in the petition, will be appointed to a fiduciary or nonfiduciary office or role relating to the trust or will receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for existing or potential future liability;

(8) Whether the relief sought in the petition would lead to any limitation on, exculpation from, or indemnification for any existing or potential future liability on the part of any fiduciary; and

(9) Whether any required consents are being given on behalf of any beneficiaries by representation under 12 Del. C. § 3547. Any petition which relies upon such consents also must conform with the requirements of Rule 103.

(d) In addition to the foregoing, any petition to modify a trust by consent that seeks to confirm a change of situs of a trust from another jurisdiction to Delaware, or that seeks to apply Delaware law to a trust despite a choice of law provision selecting the law of another jurisdiction, also shall address:

(1) Whether the trust instrument contains a provision expressly allowing the situs of the trust or the law governing the administration of the trust to be changed;

(2) If the trust was settled or created in a jurisdiction other than Delaware or contains a choice of law provision in favor of the law of a jurisdiction other than Delaware, whether or under what circumstances the law of the other jurisdiction authorizes changing the situs of the trust or the law governing the administration of the trust;

(3) Whether application has been made to the courts of the jurisdiction in which the trust had its situs immediately before the change of situs to Delaware for approval of the transfer of situs of the trust to Delaware, and the status of the application, or if no application was made, why such approval need not be sought;

(4) Whether Delaware law governs the administration of the trust, and, if so, why. To the extent that the petition relies upon the domicile of the trustee as support for a determination that the trust situs is Delaware or that Delaware law governs the administration of the trust, the petition shall explain why Delaware is the principal place of trust administration, taking into account the administrative tasks and duties that will be carried out by the trustee, any tasks and duties assigned to advisers, trust protectors, or other persons, and any other factors counting in favor of or against Delaware jurisdiction, such as the ability of the Delaware trustee to resign automatically or under specific circumstances; and

(5) Whether a court of any other jurisdiction has taken any action relating to the trust.

IT IS FURTHER ORDERED that Court of Chancery Rule 101 shall be amended by substituting in its entirety the following language for existing Section XII, Rule 101, effective May 1, 2012.

Rule 101. Appendix of exhibits to consent petition.

(a) The party submitting the consent petition shall file contemporaneously an appendix of exhibits containing all documents relevant to the Court's review of the petition, including but not limited to:

- (1) The trust instrument;
- (2) The terms of any proposed modification of the trust's governing instrument;
- (3) A blacklined version of the proposed modified trust instrument or other appropriate document indicating plainly in what respect the proposed modified trust instrument differs from the current trust instrument;
- (4) Any orders relating to the trust instrument;
- (5) A family tree or other document showing the relationship to the trustor of those having a beneficial interest in the trust; and
- (6) Consents or statements of non-objection to the relief sought in the petition from all whose interest in the trust is affected by the petition, which may include, but shall not be limited to, consents from:
 - (i) Trustees and other fiduciaries, unless they have otherwise signified their consent or non-objection to the petition by acting as a petitioner or accepting a fiduciary position;
 - (ii) Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or non-exercise of a power of appointment, if the present interest in the trust terminated on the date the petition is filed;
 - (iii) The trustor of the trust, if living; and
 - (iv) All other persons having an interest in the trust according to the express terms of the trust instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

IT IS FURTHER ORDERED that Court of Chancery Rule 102 shall be amended by substituting in its entirety the following language for existing Section XII, Rule 102, effective May 1, 2012.

Rule 102. Form of consents to the relief sought in the petition.

- (a) Consents to the relief sought in the petition shall be submitted in the following form:
- (1) Each consent shall have a signature line with the name of the individual signing the consent typed or printed underneath.
 - (2) Each consent shall be executed by (i) the beneficiary personally; (ii) the beneficiary's attorney *ad litem*; (iii) a person authorized to represent the beneficiary under 12 Del. C. § 3547 or any successor statute; or (iv) a person authorized by applicable law to represent the beneficiary as to the petition (such as, but not limited to, the beneficiary's attorney-in-fact or the Attorney General in the case of certain charitable beneficiaries).
 - (3) Each consent shall be acknowledged by a person authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) unless there is justifiable cause why the consents cannot be acknowledged and the Court waives the requirement of an acknowledgment by separate order.
 - (4) Each consent shall affirm that the party executing the consent has been provided with the petition and all disclosures and documents required by Court of Chancery Rules 100(b), 100(c),

and 101, and has received, read, understood, and been provided with an opportunity to consult with counsel regarding the consent and the materials provided.

(5) A consent may, but need not, waive notice of draft reports, reports, hearings or other matters relating to the petition.

(6) Each consent shall include a statement in which the consenting party consents to the jurisdiction of the courts of this State as a proper forum for (i) the resolution of all matters pertaining to the administration of the trust for so long as the situs of the trust is Delaware and (ii) any future matters arising out of or relating to the subject matter of the petition.

(b) A statement of non-objection is deemed a consent for purposes of this Rule.

IT IS FURTHER ORDERED that Court of Chancery Rule 103 shall be amended by substituting in its entirety the following language for existing Section XII, Rule 103, effective May 1, 2012.

Rule 103. Consent petitions appending consents under 12 Del. C. § 3547.

(a) In addition to complying with Rules 100-102, every petition to modify a trust by consent that includes one or more consents being given on behalf of any beneficiaries by representation under 12 Del. C. § 3547, or any successor statute, shall address with particularity the process used to obtain the required consents, including the information provided to the parties giving consent.

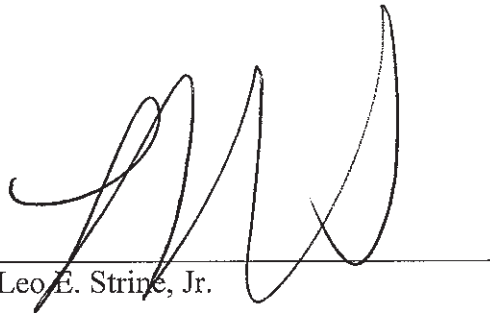
(b) Each consent executed under 12 Del. C. § 3547, or any successor statute, shall include a reference to the statute, state the relationship of the person signing the consent to those represented, certify that no material conflict of interest exists between the consenting party and the person(s) represented, including any of the factors set forth in subsection (c) of this Rule, and include in the signature block the name of the person signing the consent, the class of those persons represented, and the relationship between the person signing the consent and the class of persons represented.

(c) Any petition falling under this Rule shall contain a certification, signed by the senior Delaware attorney involved in the matter and the senior out-of-state attorney, if any, involved in the matter, certifying to the best of their knowledge that, after good faith investigation, the person purporting to consent for others by representation:

(1) Will not, as a result of the relief sought in the petition, be appointed to a fiduciary or nonfiduciary office or role relating to the trust;

(2) If already serving in a fiduciary or nonfiduciary office or role relating to the trust, will not as a result of the relief sought in the petition receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on, exculpation from, or indemnification for any existing or potential future liability; and

(3) Does not have an actual or potential conflict of interest with those persons represented relating to the relief sought in the petition, including but not limited to conflicts relating to differing investment horizons or an interest in present income over capital growth.



Leo E. Strine, Jr.

Respectfully advised,



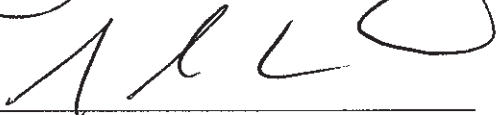
John W. Noble



Donald F. Parsons, Jr.



J. Travis Laster



Sam Glasscock, III