

Chairman Jeff Longbine
Senate Financial Institutions Committee
Kansas State Capitol
300 SW 10th Ave.
Topeka, KS 66612

RE: Testimony in **SUPPORT** of SB 204

Chairman Longbine and members of the Committee:

On behalf of Beneficient Fiduciary Financial, L.L.C. (“BFF”), Kansas’ first technology enabled fiduciary financial institution (“TEFFI”), I want to thank you for holding this committee meeting and allowing me to testify in support of SB 204.

In ²⁰²¹~~2001~~ this legislative body overwhelmingly passed the TEFFI Act. The provisions of that Act are clear but our Kansas regulator is ignoring the clear provisions of the law jeopardizing BFF’s business and the future of the TEFFI Act. SB 204 seeks to address this critical circumstance by adding additional clarity to a fundamental issue impacting BFF’s operations and the TEFFI industry as a whole. That issue is a TEFFI’s status as a Kansas trust company.

You will recall that a TEFFI’s business plan involves non-Kansas residents contributing non-Kansas alternative assets to Kansas trusts. These customers, who have no connection to the State of Kansas, will contribute assets to Kansas trusts only if they are confident that the trustee is a qualified trust company regulated by a state banking commission. As a result, a TEFFI must be a trust company recognized by both state and federal regulatory agencies (including the OSBC and the SEC) in order instill confidence in the customer that they are transacting with a regulated trust company.

Trust company status was addressed and discussed at length during the TEFFI legislative process. In early 2021, I testified before both the House and Senate committees. In each instance, my testimony began by answering two basic questions: “What is a TEFFI?” and “What does a TEFFI do?”

To the question, “What is a TEFFI?” I responded that a TEFFI was a **specialized trust company** subject to review and examination by the Office of the State Banking Commissioner.

Next, I responded to the question “What does a TEFFI do?” by stating that a TEFFI provides **trust services** and products for investors in alternative assets.

Recognizing these fundamental truths, K.S.A. §9-2308 expressly states that a TEFFI is a trust company. Let me read two sentences from that section.

While a fiduciary financial institution is a trust company for purposes of federal and state law and rules and regulations and possesses trust powers under this act, it is the intent of this section to impose restrictions on the name of such institution to avoid confusion with other banks and trust companies that operate in this state but that are not fiduciary financial institutions. The naming restrictions imposed under this section shall in no way reduce or eliminate the trust powers granted to a fiduciary financial institution as a trust company under this act. (emphasis added).

These two sentences make it clear that a TEFFI is a trust company and can engage in trust business under the TEFFI Act.

Importantly, §9-2308 is not the only statutory authority that makes these incontrovertible facts clear.

1. K.S.A. §9-2301(b)(5) defines the custodial services provided by a TEFFI as involving the exercise of “fiduciary and *trust powers*.”
2. K.S.A. §9-2304(a) provides that (except to the extent of a conflict with the TEFFI Act) Chapter 9 of the Kansas Statutes Annotated (the primary statutory provisions for banks and trust companies) applies to a TEFFI.
3. K.S.A. §9-2304(a)(10) expands the definition of *trust business* under Kansas law to include “*fidfin and fiduciary financial institution business*” but in no way restricts a TEFFI from engaging in other trust business as defined by Kansas law in connection with its fidfin transactions.
4. K.S.A. §9-2309(a)(3) provides that a TEFFI shall “perform fidfin transactions, custodial services and *trust business* in Kansas, and a fiduciary financial institution may also engage in fidfin transactions, custodial services and *trust business* in other states to the extent permitted by applicable law.”
5. K.S.A. §9-2309(d) provides circumstances in which *trust business* of a TEFFI will be deemed to have occurred in Kansas.
6. K.S.A. §9-2310(a)(3) provides that a fiduciary financial institution is authorized to engage in a variety of activities including “*to engage in trust business as defined in K.S.A. 9-701, and amendments thereto* as incidental to its fidfin transactions.”
7. K.S.A. §9-2312 authorizes a TEFFI to hire third-party professionals and agents to assist the TEFFI in engaging in *trust business*.

SB 204 expands on the clarity of the TEFPI Act by making it even more clear that a TEFPI is a trust company, possesses trust powers, has a charter, can engage in trust business, and is regulated by the OSBC.

If the current statute is so clear, why are we here discussing amendments to the law? Great question.

First, as you may recall, Beneficient is in the final stages of becoming a public company. During that process, Ben has a legal duty to make full and adequate disclosures. In its registration statement, Ben disclosed that BFF is a Kansas trust company under the TEFPI Act citing the statutes noted above (including KSA 9-2308).

In response, the SEC recently indicated that they were reserving their conclusions on this question. The SEC specifically noted that BFF's status as a trust company was a state law issue that needed to be resolved with the OSBC. Further communications led to the conclusion that the OSBC was taking a contrary position as to BFF's status as a trust company – despite the clear language of the TEFPI Act. BFF has since gone to great lengths to secure that resolution with the OSBC with no success.

Despite the clear and unambiguous language of the statute, the Commissioner has been unwilling to acknowledge BFF's status as a trust company. This is, of course, disappointing – particularly since there is no statutory support for his position. The Kansas legislature overwhelmingly passed a law which was signed by the Governor. That law is abundantly clear - yet the regulatory body charged with overseeing that law has chosen to ignore the express language of the statute. This unsupportable position jeopardizes BFF's business, Ben's public listing and the long-term success of the TEFPI industry.

The matter is urgent and quick resolution is critical for three reasons: First, Ben and BFF have a legal obligation to make full and adequate disclosures to the judiciary and to state and federal regulators. The OSBC's unsupportable position demands that Ben make inaccurate and deficient disclosures. Second, based on communications with the SEC, we believe that Ben's registration statement will become effective later this month provided we can resolve these issues. However, the SEC has made it clear that Ben's registration statement will not become effective as long as its status as a trust company is an unresolved issue with the OSBC. Third, BFF must be able to represent to its current and future customers that it is a regulated trust company under Kansas law.

Ben's listing as a public company will enable the expansion of BFF's trust and liquidity services resulting in greater contributions to the Kansas economic growth zones. To date 62 rural communities have received more than \$15 million in economic growth contributions.

Since our efforts to resolve these issues directly with the OSBC have proved ineffective, SB 204 is necessary to provide additional clarity about the trust company status of a TEFPI.

Let me close by stating that in addition to making it clear that a TEFPI is a trust company, KSA 9-2308 also included provisions to distinguish between trust companies that engage in fidfin transaction

from trusts companies that do not. In particular, KSA 9-2308 imposes restrictions on a TEFFI's business name as well as guidance on advertising. SB 204 does not disturb the naming restrictions or advertising provisions. The language does, however, make it clear that a TEFFI can represent the legal truth that it is a trust company in legal and regulatory filings as well as in its legal disclosures to ensure the TEFFI satisfies its obligation of full disclosure as a regulated trust company.

Again, I thank you for your time and permitting me to testify in favor of SB 204.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek L. Fletcher". The signature is written in a cursive style with a horizontal line extending to the right.

Derek L. Fletcher