

CONFIDENTIAL

Inter-Office  
Communication



Robert F. Milligan  
Comptroller of Florida

DATE: November 9, 1998  
TO: Director Simon  
FROM: David Burgess  
SUBJECT: Stanford Trust Company

This is an offshore trust company, chartered under the laws of Antigua. They wish to establish a trust representative office (TRO) here, to "... meet with customers ...and facilitate the transfer of documents and assist in customer communications,...". All of the actual trust or fiduciary business of the trust company would be conducted at its place of business in Antigua. The customers are non US citizens.

Attached is the original letter dated October 12, 1998, from counsel for the trust company regarding the proposal. We advised them that this was not a routine matter and would be subject to additional review over that accorded to domestic institutions. Richard Donelan and I met with representatives of Greenberg Traurig and the trust company. At that time we were provided an analysis of the proposal by Greenberg Traurig, attached, supporting their contention that they can establish a TRO.

In our meeting with trust company representatives, we were given certain verbal information regarding the Stanford Group to establish the trust company bonafides: the Antigua presence is substantial, they own a registered Florida broker dealer, they own a Louisiana trust company, they are active in cleaning up the Antigua banking laws, references if we require from ex DEA officials, etc. We were also advised that if we did agree to establishment of a TRO, they would be willing to provide a written agreement for us to examine the office.

My analysis follows. Richard Donelan is of the opinion that they cannot establish an office. I'll let him advise as to his reasoning; I'd probably leave out something basic to it in my translation.

In the past, in our general position on TROs, the proposed business would not be considered to be a "trust business". See attached 6-30-81 letter to J. Thomas Cardwell, Esq.

Because the proposed activity of a trust representative office is not considered conducting a trust business, the restrictions of 655.922(2) (c) cannot apply: The proposed TRO business cannot imply that the business being conducted is the kind or character of business transacted or conducted by a financial institution, because the business to be transacted or conducted is not a "trust business". It could be conducted by anybody under this section.

However, 655.922(2) states that "No person other than a financial institution shall, in this state: (a) Transact business under any name or title that contains the words ... "trust company"...".

There seem to be two questions here: (1) Is the TRO transacting business under the meaning of this definition, and (2) Is it a financial institution?

Regarding question (1), my opinion is they are. We restrict the use of the name bank or trust company in the title of any business a company may be engaged in, if its not banking business. This would apply here.

Regarding question (2), I think the answer is no. "Financial institution" as defined at Section 655.005(1) (h) means a state or federal association, bank, savings bank, trust company, international bank agency, representative office, or international administrative office, or credit union.

Stanford Trust Company may not be a "trust company" as defined by statute. "Trust company" is defined at Section 658.12(21) to mean any business organization, other than a bank or state or federal association, which is authorized by lawful authority to engage in a trust business. Section 658.12(11) defines "law" to mean each "... valid and applicable statute...of any state and each of its political subdivisions or of the United States and each of its departments, ... ." It doesn't include law of another country. Therefore, pursuant to our statutes, it may not have "lawful authority". It certainly is not a "...state or federal ...trust company...". Stanford Trust Company is not a financial institution under our statutes.

Legal counsel for Stanford is of the opinion that because the trust company is not an international banking corporation, and because the TRO would not engage in "banking business", Chapter 663 would not be applicable to the proposal. I don't know anything about international banking offices or business, so I won't comment.

### Conclusion

It appears to me that a strict reading of our statutes says the TRO cannot be established directly by the trust company. They cannot open an office in the name of the trust company for any kind of business; they are not a financial institution and so cannot use the title "trust company" in their name while engaging in any business in Florida. They probably can engage in the proposed activity if they do it outside the auspices of the trust company, e.g. through a subsidiary or affiliate office if employees of the subsidiary provide the services.

However, if we wanted to make it a policy decision to permit such an arrangement, perhaps the definition of trust company can be stretched to include offshore trust companies lawfully established pursuant to the laws of another country.

Cc: Linda Townsend  
Richard Donelan