

Chairman Jim Kelly
Joint Committee on Fiduciary
Financial Institutions Oversight
Kansas State Capitol
300 SW 10th Ave.
Topeka, KS 66612

RE: Testimony for December 7, 2021, Joint Committee Hearing

Chairman Kelly, Vice Chairman Longbine and members of the Committee:

Thank you for allowing me the opportunity to present written testimony to the Committee regarding the implementation of the technology enabled fiduciary financial institutions act (the “Act”) and the commencement of fiduciary financial (“Fidfin”) activities in the State of Kansas.

Economic Benefits for Kansas

As the Committee is aware, the Act provides significant benefits to the State of Kansas, including a requirement for technology-enabled fiduciary financial institutions (“TEFFIs”) to fund economic growth zones. That funding is intended to spur job and income growth, main street revitalization, education facility improvements, healthcare and senior facility improvements and other initiatives benefitting rural communities across the state.

Under the Act, funds generated by a TEFFI’s Fidfin activities are to be divided between (i) the technology-enabled fiduciary financial institutions development and expansion fund (the “TEFFI Development and Expansion Fund”) administered by the Secretary of Commerce and (ii) one or more qualified charities operating for the exclusive benefit of economic growth zones (“EGZ Foundations”).

The Secretary of Commerce is required to administer the TEFFI Development and Expansion Fund to achieve two primary purposes: (i) to benefit economic growth zones across the state and (ii) to facilitate the development, growth and expansion of Fidfin activities and custodial services in the State of Kansas.

The EGZ Foundations will be organized pursuant to governing documents promulgated by the Department of Commerce. They must commit to use funds exclusively for the benefit of economic growth zones or post-secondary educational institutions in the state. They are also required to provide annual reporting to the Department of Commerce. It is expected that the EGZ Foundation will be governed by a board comprised of community leaders and representatives from the chartered TEFFI, with community leaders comprising a majority of such board.

Pursuant to the Act, Beneficient Fiduciary Financial, L.L.C. (“BFF”) is required to fund the TEFFI Development and Expansion Fund and the EGZ Foundations with cash, assets or beneficial interests representing \$9 million in connection with the issuance of its final charter.

BFF has complied with all standard application requirements of the OSBC in addition to answering and submitting additional diligence requests by the OSBC and now stands ready for the issuance of its final charter, to commence operations and to fulfill its obligations to fund these programs. In addition to the \$9 million funding requirement, BFF has pending Fidfin transactions which would generate significantly more funding during this month of December for the TEFFI Development and Expansion Fund and the EGZ Foundations if and only if BFF is issued its final charter by the OSBC before the December holiday break.

Legislative Changes

As you are aware, one of the enumerated duties of this Committee is to review any proposed amendments to the Act. BFF does not believe any legislative changes are warranted except for a small number of changes to correct minor, non-substantive administrative items.

Status of BFF’s Charter

On June 11, 2021, BFF submitted its TEFFI charter application along with the required \$1 million application fee to the Office of the State Bank Commissioner (the “OSBC”). Since that date, representatives of BFF and the OSBC have been engaged in regular dialogue regarding the processing of the application. As of today, BFF has submitted over 100 documents totaling approximately 2,400 pages of materials to the OSBC.

BFF believes it has fully complied with the Act’s requirements for the issuance of a final charter and stands ready to distribute the \$9 million required by the Act to the TEFFI Development and Expansion Fund and the EGZ Foundation and additional funds derived from new business before year-end

We further believe that BFF should be issued a permanent charter prior to the December holiday break (unless the Commissioner requests an extension of time, up to six months, for such charter issuance and this Committee approves that extension request). We do not believe an extension is warranted.

TEFFI Pilot Program

The Act creates a pilot program (funded solely by BFF). The intended purpose of the pilot program is to afford the OSBC with time to build an examination team, become familiar with a TEFFI’s operations and to develop the necessary skills, expertise and processes necessary to successfully regulate the industry. We believe that, at a minimum, the pilot program should enable BFF to operate upon issuance of its full final charter this month through 2022, with an examination to be conducted at the end of that 12-month period. Following this examination (assuming the OSBC believes it is ready to regulate the industry), the pilot program will end, and other industry participants will be permitted to submit TEFFI charter applications. It is important to note that



BFF cannot operate and close business without a full and final charter issuance this month, because customers will not close transactions without the representation and warranty that BFF operates under a full and final charter. Without such charter being issued this month, BFF will lose customers and the opportunity to close pending business that generates the funds for the EGZ Foundations and Department of Commerce to deploy for economic growth and development within the EGZ communities of Kansas. As important, BFF and the state of Kansas will lose credibility with the alternative asset industry if BFF is not issued and full final charter this month.

BFF is committed to regularly engaging with the OSBC, the Department of Commerce and this Committee to ensure that the pilot program is conducted to achieve its intended objectives within appropriate time frames.

The Act delivers significant economics to rural communities and positions Kansas as a leader in the financial services industry. We are excited to commence operations and to begin delivering these benefits to the state.

Thank you again for permitting me to testify today.

Sincerely,

A handwritten signature in blue ink that reads 'Derek L. Fletcher'.

Derek L. Fletcher
President and Chief Fiduciary Officer