

House of Representatives  
Financial Institutions and Rural Development Committee  
Wednesday January 26, 2022

Thank you, Chairman, Kelly for the opportunity to visit with your committee.

I am here today on behalf of Beneficient Fiduciary Financial (BFF) to talk about certain changes to the TEFPI legislation proposed by the OSBC in House Bill 2489. We do want to express our appreciation with the OSBC. As late as Monday, we were working on the proposed bill with the OSBC. We have some areas where we have agreement. Those changes are technical in nature (correcting references, grammar, and punctuation) and include smaller material ones that are apparent to all of us after our cooperative efforts over the last seven months.

Despite these efforts, there remain some substantive proposals in this bill that BFF opposes at this time. There are two primary reasons for our opposition: (1) with BFF having only been authorized to commence business 3.5 weeks ago, it is too early in the game to be making changes and (2) the proposed changes attempt to regulate BFF as if it utilizes a traditional business model for a commercial bank.

I have been in banking since 1980, starting as a trust officer. During the ag crisis of the late 1980's and for 20 years I was the president of Stout & Deines, Inc a consulting company specializing in troubled banks. We worked with many different kinds of banks. Most recently, I was the Director of the Robbins Banking Institute at Fort Hays State University, where I taught banking. I tell you this, so I can explain that BFF does not utilize a traditional banking business model.

1. BFF does not use customer deposits to fund its lending activities. There are no depositors. BFF relies instead on national capital markets.
2. Lending is very specialized. We only lend to special kinds of trusts our customers create.
3. The stakeholders are not the public; but rather an economic growth zone (Hesston Kansas for BFF) and the Kansas Department of Commerce. None of their money is at risk, only those funds that flow from the trusts our customers create.
4. The assets, "Alternative Assets" are professionally managed by experienced and capable managers. The quality of the financial information is very good.
5. While the assets are not liquid, they are self-liquidating. Alternative Assets have life cycles of 12 to 15 years. They are initially funded by Limited Partners (LP), and the General Partner (GP) invests the funds according to a plan disclosed to the investors. There is a growth period and then a liquidation phase. Typically, the fund is converted back to cash at the end and the proceeds are returned to the Limited Partners.
6. Our customers, those folks who are seeking liquidity from their Alternative Assets, are sophisticated investors, with a net worth in excess of \$5 million, exclusive of their home, and many times they are represented by professional money managers.
7. We tailor the terms of each loan to match the expected cash flow of the Alternative Investment.

8. We control the Alternative Asset, which is collateral for the loan. Most of the traditional problems associated with collecting a loan are non-existent for TEFFIs.

That is not to say there is no risk. There is. It is just different. Recognizing that difference, this committee (and its Senate counterpart) spent months crafting a new law that strictly regulates TEFFIs, while recognizing that the “banking blueprint” doesn’t apply here. With the TEFFI law months old and BFF’s operational charter only weeks old, now is the time to begin the business, let it operate, examine the business, and then consider appropriate statutory changes and regulations.

So, let’s get to specifics.

Section 1 of the OSBC Proposal (HB 2489) speaks to enforcement actions and the resolution of the business in the event of failure., The section talks about “Capital Requirements.” There are no capital requirements at this time. The commissioner has no requirements to enforce. A reasonable period of operation and examination will allow OSBC and the Legislature to develop realistic capital requirements or determine that such mandates are unnecessary. Remember, this business model is fundamentally different from a commercial bank and should not automatically have the same rules as one.

Section 3(d)(3); “Public need for the proposed fiduciary financial institution.” This concept is archaic and outdated for the 21<sup>st</sup> century. We live in a time where I can borrow money in Kansas to finance a farming operation from a bank in the Netherlands. Borders are no longer relevant. The notion of public need falls by the wayside. As a practical matter, most of BFF’s, or any other TEFFI’s, transactions will be with investors who do not reside in Kansas.

Section 3(d)(4) Prospect for the success of the proposed fiduciary. This section is overly broad. I think more knowledge of the industry would result in a more detailed statute with specific guideposts.

Section 3(d)(5) “Any other criteria...” This section is overly broad as well. What would the other criteria be? It would be better to allow for a period of operation and examination so that we could determine precisely if and what other criteria warrant inclusion in the TEFFI law.

There are other sections where the situation is similar. Making such substantive changes is premature. The best possibility would be for the OSBC and BFF to sit down after an exam, discuss lessons learned from the experience and then inform the Legislature of any suggestions for statutory changes. An exam puts us on the same page and allows the OSBC the opportunity to craft realistic and understandable rules and regulations.

Thank you. I am ready for questions.

Respectfully submitted  
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Beneficient