

**Testimony to Joint Committee
On Fiduciary Financial Institutions Oversight**

November 21, 2024

Good morning, Mr. Chairman and members of this Joint Committee on Fiduciary Financial Institutions Oversight. My name is David Herndon. I am the Kansas State Bank Commissioner and appear before you today to update you on the Technology Enabled Fiduciary Financial Institution, or TEFFI activity in the State of Kansas from the perspective of my agency, the Office of the State Bank Commissioner (OSBC). Thank you for this opportunity.

I am joined in person today by OSBC Deputy Bank Commissioner, Tim Kemp and OSBC General Counsel, Brock Roehler. Both will be available, as will I, to answer questions from the committee members this morning.

I appeared before this committee last year and in 2022 to report on the regulatory activities conducted by OSBC regarding the TEFFI industry. I say “industry” but it’s more a “business”, as to date there remains only one TEFFI in existence – Beneficient Fiduciary Financial, LLC, Hesston, KS, now known as BFF, LLC, a subsidiary of Beneficient, Dallas, TX.

Because I have appeared before and provided updates, my comments this morning will center on the actions in the past year and be focused on BFF. But allow me to remind the committee of these certain facts regarding the TEFFI Act in 2021:

Article 16 of the Kansas Banking Code specifies the state banking board as the entity to consider and approve or deny financial institution charter applications.

Neither the OSBC nor the State Banking Board received a complete application nor acted upon the issuance of a charter for BFF. Instead, the Kansas legislature granted BFF its charter during the 2022 legislative session through passage of SB 337, allowing the charter to be retroactive to December 31, 2021.

After that action, but also in 2022, HB 2489 amended the TEFFI Act. The TEFFI Act and amendments were codified as Kansas Statutes Chapter 9, Article 23 (the Kansas Banking Code).

The OSBC is the sole financial regulator for TEFFIs. There is no federal regulator for TEFFIs. However, in the case of BFF, its parent company Beneficient is a publicly traded company subject to Security and Exchange Commission rules, regulation, reporting and oversight.

Kansas is the only state with a TEFFI Act or similar legislation. No other state bank commissioner has reported to me that their state has considered or is likely to take up any type of TEFFI legislation.

Therefore, to the best of my knowledge, BFF, LLC is the only TEFFI in existence.

Neither the state banking board nor the OSBC has received an application or even an inquiry by any other entity regarding obtaining a TEFFI charter. It has been repeatedly reported by BFF officers and officials that several different potential organizers have expressed an interest in obtaining a charter, but again, to date, no inquiries or applications have been made to the state banking board or OSBC.

The TEFFI Act established an annual assessment of not less than \$1.0 million to any chartered TEFFI be paid to the Bank Commissioner. This assessment was proposed and adopted without consultation or input from OSBC, so we have no position on this provision. But the Bank Commissioner must remit all moneys received from such assessments to the State Treasurer who will deposit the entire amount in the State Treasury and credit 75% of each remittance to the Bank Commissioner Fee Fund and 25% to the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund with the Department of Commerce.

Moving to regulatory activities in the past 12 months by OSBC regarding BFF. OSBC conducted, completed, and delivered two Reports of Examination. The third examination began on Monday of this week. The two completed were a Bank Secrecy Act / Anti Money Laundering Exam and an Information Technology Exam of BFF.

In accordance with K.S.A. 9-1712(a), examination reports are confidential. Neither OSBC, BFF or any of its directors, officers, or employees may disclose or make public, in any manner, the Examination Reports, its findings, recommendations, or directions. Consequently, our findings and the Reports of Examination were presented to BFF's senior management and board of directors with each director's signature required attesting to that director's personal review of the two Reports of Examination.

The third examination, that commenced Monday of this week, consists of reviewing BFF's administrative and operational practices and procedures as well as a review of selected fidfin transactions. This examination will also evaluate potential areas of risks pertaining to BFF's business model. Any findings of statutory or regulatory violations and fiduciary practices and procedures, except as allowed by the TEFFI Act, will likewise be reported to BFF's senior management and board of directors.

These three examination types will likely be the only examinations OSBC will conduct as it is still impossible to conduct meaningful Safety and Soundness examinations due to the restrictions imposed by the Kansas TEFFI Act.

Safety and Soundness examinations on all other OSBC regulated entities follow and comply with international industry standards and assign ratings in Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk (CAMELS) components in compliance with the Uniform Financial Institutions Rating System. Our examinations on regulated trust companies and trust departments assign ratings in Management, Operations, Internal Controls and Audits, Earnings, Compliance and Asset Management components in compliance with the Uniform Interagency Trust Rating System. BFF is a chartered TEFFI. It does not operate like a typical bank or trust company. Consequently, the international industry examination and ratings standards cannot be applied to a TEFFI.

Further, the Kansas TEFFI Act specifically disallows an examination to consider earnings as a component and assigns any goodwill asset as a capital component, departures from the Uniform Financial Institutions Rating System, the Uniform Interagency Trust Rating System and Generally Accepted Accounting Principles (GAAP). Therefore, I once again caution this committee and the Kansas legislature that no standard exists to determine the financial Safety or Soundness of any TEFFI, especially the only TEFFI known to exist – BFF. The legislature should revisit this exposure if a worthwhile Safety and Soundness examination is sought.

I mentioned BFF, LLC is a subsidiary of Beneficient. It is one of several subsidiaries. By definition, a holding company actively maintains control of their subsidiaries, whether they are hands-on or hands-off owners of those subsidiaries.

Consequently, we monitor the financial condition of Beneficient through its filings to the Securities and Exchange Commission (SEC) and press reports regarding Beneficient. Recent filings along with share prices indicate significant stress on the company. Assuming one role of a parent holding company is to be a source of strength for its subsidiaries, that stress level extends to BFF.

If this stress continues or worsens, the question arises about BFF's ability to continue as a going concern. The TEFFI Act does not contain any provisions or directions addressing either the voluntary or involuntary liquidation of a Kansas TEFFI. The legislature should revisit this exposure as well.

Many have suggested publicly and privately to our office, the Kansas legislature revisit the entirety of the TEFFI Act with amendments, revisions, and even complete repeal. That decision solely rests with the legislature. OSBC takes no position on that action other than those recommendations I have already mentioned.

OSBC will continue striving to provide BFF worthwhile and meaningful regulatory oversight. And we will openly meet with the TEFFI stakeholders to address relative matters as the sole regulator for TEFFIs, be there one TEFFI or many.

Thank you. My staff and I will respectfully stand for questions.