

MAINE BUREAU OF FINANCIAL INSTITUTIONS

ORDER APPROVING APPLICATION TO ESTABLISH A NONDEPOSITORY TRUST COMPANY TO BE KNOWN AS WATCH POINT TRUST COMPANY

Nixon Peabody LLP, Rochester, New York ("Nixon Peabody") filed an application, pursuant to Title 9-B M.R.S.A. Chapter 121, to establish a nondepository trust company to be known as **Watch Point Trust Company** ("Watch Point TC") and to be located in Boston, Massachusetts. Watch Point TC will have a registered agent in Maine. The application was accepted for processing on June 28, 2010. Public notice, as required by Title 9-B M.R.S.A. 252.2(B), was provided by publication, posting on the Bureau's website and mail to interested parties affording them an opportunity to either submit written comments or request a hearing. The Bureau received no comments during the public comment period ending August 2, 2010.

A Principal Bank Examiner of the Maine Bureau of Financial Institutions conducted an investigation of this transaction. All evidence and pertinent material which were considered by the Examiner were also considered by the Superintendent in reaching his decision.

Nixon Peabody is a full-service, international law firm and one of the largest multipractice firms in the United States. It offers comprehensive legal services to individuals and organizations of all sizes in local, state, national and international matters. Its clients include emerging and middle-market businesses, national and multinational corporations, financial institutions, public entities, educational and not-for-profit institutions, and individuals.

Nixon Peabody Financial Advisors LLC ("NPFA"), a wholly-owned subsidiary of Nixon Peabody, is a registered investment advisor ("RIA") and registered with the Securities and Exchange Commission ("SEC"). NPFA's services include investment advisory, employee benefit planning, income tax planning and preparation, retirement planning, education planning, risk management/insurance planning and estate and gift planning.

Recent amendments by the SEC to custody and safekeeping rules (17 CFR Parts 275 and 279) under the Investment Advisers Act of 1940 require a qualified custodian maintaining client assets to send statements directly to the advisory clients. This requirement restricts the ability of RIAs, including NPFA, to prepare and send statements to their clients. Inasmuch as subaccounting and client statement preparation is a substantial part of NPFA's operating model, this ruling poses a significant structural challenge to Nixon Peabody. The formation of Watch Point TC, which as a nondepository trust company would then become a "qualified custodian" as defined by SEC rule, and

the partial spin out of NPFA's platform operations to Watch Point TC will allow operations to continue in an uninterrupted manner and with no client impact. In addition to being a qualified custodian, Watch Point TC will offer investment management, employee benefit planning, income tax planning and preparation, retirement planning, education planning, and risk management/insurance planning. Its clients will include individuals, trustees, pension and profit sharing plans and other limited partnership and limited liability companies.

The proposed directors, officers and employees of Watch Point TC are employees of Nixon Peabody. The financial resources of Nixon Peabody are sound and sufficient to provide necessary support, if any, to Watch Point TC. The Bureau has considered the competitive effects, the future prospects and the convenience and needs of the markets to be served and found them consistent with approval. Accordingly, the application of Nixon Peabody to establish a nondepository trust company with the name "Watch Point Trust Company" is approved, subject to the conditions listed on Appendix A.

The transaction shall be completed within one year of the effective date of this Order, unless a written extension is granted by the Superintendent. Any person aggrieved by this Order shall be entitled to a judicial review of the Order in accordance with the Maine Administrative Procedure Act, Title 5, Chapter 375, subchapter VII.

By order of the Superintendent, effective September 13, 2010.

/s/ Lloyd P. LaFountain III
Superintendent
Gardiner, Maine
August 13, 2010

Watch Point Trust Company Appendix A

CONDITIONS

1. Deborah L. Anderson, Katherine L. Babson, Jr., John H. Clymer, Sarah T. Connolly, Thomas M. Farace, John T. Fitzgerald, Jr., Ronald Garmey and Evelyn V. Moreno are approved as directors.
2. Charles S. Gaziano is approved as the chief executive officer, E. Thomas O'Hara, Jr. is approved as the Chief Investment Officer, and A. Christine Tshudy is approved as Chief Financial Officer.
3. Watch Point TC shall maintain Tier 1 capital (as defined in Bureau Regulation 27) not less than the greater of (a) \$300,000 or (b) the sum

of (1) 10 basis points (0.10%) of discretionary assets and (2) 5 basis points (0.05%) of nondiscretionary assets, including assets held in custody, unless a different amount is established by the Superintendent. As such, the Superintendent reserves the right to change the above formula for determining ongoing capital adequacy.

4. If Watch Point TC fails to maintain Tier 1 capital in the minimum amount specified above in Condition #3, Watch Point TC shall be deemed to have inadequate capital and the Bureau shall have the authority to take any action authorized by Regulation 27.
5. Prior to the issuance of a Certificate to Transact Business and pursuant to 9-B MRSA § 1213-A, Watch Point TC shall pledge to the Bureau readily marketable assets having a fair value of at least \$200,000.
6. At all times, Watch Point TC shall maintain liquid assets at least equal to 25% of the minimum Tier 1 requirement.
7. All transactions between Watch Point TC and Nixon Peabody, including any subsidiaries and affiliates of Nixon Peabody, shall be conducted subject to the provisions of 9-B M.R.S.A. §468. Prior to commencing operations, Watch Point TC shall enter into written agreements, acceptable to the Bureau, governing all relationships, including shared management, employees, space and equipment, with Nixon Peabody (and its subsidiaries and affiliates) and any other affiliate. The Board of Directors of Watch Point TC shall annually review and approve any service agreements and any other transactions with affiliates, including any cost allocation or fee-sharing provisions in such agreements or other transactions. The Bureau does, however, grant a waiver to §468 to the extent that such services are covered by the Professional Services Agreement between Nixon Peabody and Watch Point TC. This waiver is limited to reimbursement for services provided to Watch Point TC by Nixon Peabody employees, waiving the requirement that the terms and circumstances would in good faith be offered to, or would apply to, nonaffiliated companies. The Bureau will review this waiver, and the "overhead allocation" calculation in particular, during its examinations of Watch Point TC and reserves the right to withdraw this waiver.
8. During the first two years of operations, Watch Point TC shall not implement any material change or deviation from its operating plan without the prior written approval of the Bureau.
9. During the first two years of operations, the Bureau must review and have no objection to any proposed executive officer or director of Watch Point TC.
10. During the first two years of operations, Watch Point TC may not open any offices without the prior written approval of the Bureau.

11. All technology-related vendor contracts must stipulate that the performance of services provided by the vendors to Watch Point TC is subject to the Bureau's examination and regulatory authority.
12. Prior to the issuance of a Certificate to Transact Business, Watch Point TC shall submit its written Anti-Money Laundering Program and Customer Identification Program to the Bureau.
13. The Superintendent must approve the organizational documents (i.e., Articles of Organization and Bylaws).
14. Watch Point TC must submit evidence that it has obtained adequate fidelity bond coverage, including an Errors and Omission rider; the coverage must be in an amount (including the amount of the deductible) and for such coverage that shall be satisfactory to the Superintendent.
15. Watch Point TC will comply with all applicable laws, including the Maine Banking Code (Title 9-B M.R.S.A.), regulations and policies of the Bureau.
16. On the business day prior to the issuance of a Certificate to Transact Business, Watch Point TC and Nixon Peabody must certify in writing to the Bureau that no material adverse changes have occurred with respect to the financial condition or operation of Watch Point TC and Nixon Peabody, respectively, as disclosed in the application.