

Date: June 20, 2011

To: Leon D. Black

From: Elyse G. Kirschner

Re: Private Trust Company

We have investigated the possible use of a private trust company to serve as trustee of the trusts that you have created, as well as those trusts that you may create in the future. This memorandum describes the possible ownership, governance and operation of such a company. If a Black family private trust company is created, it is anticipated that, shortly after its creation, it initially would serve as trustee of the following trusts:

1. The Black 2006 Family Trust, the assets of which are worth about \$1.8 billion.
2. The Black Family 1997 Trust and the Black Family 1997 GST Exempt Trust, the assets of which are worth about \$307 million.
3. The Black 2011 Family Trusts, the assets of which in the aggregate are worth about \$200 million.
4. The Judah-A 2009 Investment Trust, the assets of which in the aggregate are worth about \$153 million.

In addition, after your death, the private trust company would serve as trustee of the trusts for Debra and your issue that are to be created at your death with the assets that comprise the bulk of your estates (i.e., not in trust). These trusts would have assets worth several billion dollars as well. The private trust company also could serve as trustee of additional trusts that

may be created by you during your lifetime and, perhaps, as trustee of trusts created by your children. Alternatively, if you are reluctant to set up the infrastructure that would be required to manage a full-service private trust company, you could designate an institutional trustee to serve as a directed trustee providing administrative services while the private trust company could be given the responsibility for investments and distributions.

I. What is a Private Trust Company?

The term "private trust company" ("PTC") generally refers to an entity, such as a corporation or limited liability company, owned or controlled by members of a single family (or trusts for the benefit of family members) which is authorized to serve as a trustee of trusts for members of that family. The laws of various states, such Nevada and New Hampshire, have been changed in the past several years to facilitate the creation and operation of PTCs.

II. Rationale for the Use of a PTC by the Black Family

Over the past 25 years, you have established a number of trusts for the benefit of your children and more remote descendants. These trusts currently hold assets worth between \$2 billion and \$3 billion. It is expected that you may create additional trusts for these beneficiaries and for the benefit of charity during your lifetime and at death, and that these trusts also will hold substantial assets. The trustees of the existing trusts are now some combination of you, John Hannan, Barry Cohen, Debra and Richard Ressler.

The selection and identity of appropriate successor trustees has been a matter of significant interest to you. The use of a PTC, rather than a series of individuals, as a successor trustee for the Black family trusts will not obviate the need to select appropriate individuals to make investment and distribution decisions and to provide necessary accounting and tax

compliance services. In any case, these decisions and services ultimately will be provided by individuals, either independently or as directors or employees of a PTC. A PTC can, however, provide an efficient environment within which the appropriate individuals can make these decisions and provide these services.

One of your significant goals is to promote continuity of management of financial and charitable legacies you have built for your family and to permit family members to participate in that management. Creating a PTC to be controlled by them can be of assistance in meeting this goal. The additional advantages that can be provided by a PTC generally are believed to be as follows:

1. An individual who participates in making trustee decisions as a director of a PTC rather than as an individual trustee has reduced exposure to personal liability and can more easily be protected by directors' and officers' liability insurance.
2. By organizing and operating a PTC in a tax-friendly jurisdiction, it is currently possible under New York law, to avoid substantial New York State and City income taxes.¹
3. Fees paid to a PTC can be structured to include investment management fees in a manner that will enhance their deductibility for income tax purposes.
4. The governance structure of the PTC can give effective authority to the appropriate family members without exposing them to estate and gift tax liability.

¹ The avoidance of New York State and City income taxes is not a significant problem while you are alive because all of the existing trusts will be grantor trusts, all of the income from which is taxed to you.

III. Proposed State of Incorporation of PTC

We suggest that a PTC (the "Black PTC") be created as a corporation under the laws of Nevada. At the present time, Nevada has a very favorable legal environment for private trust companies. The capital requirement for establishing a PTC in Nevada is \$300,000. The application fee for approval as a PTC in Nevada is \$2,000. The process normally takes from three to six months.

The Nevada trust company regulators will require that the Black PTC maintain certain minimal contacts with Nevada and that at least one member of its board of directors be a Nevada resident. Various independent trust companies and law firms in Nevada are willing to facilitate compliance with the minimal contact requirements by leasing space at their offices, by entering into agreements to provide personnel to perform services such as telephone answering, mail forwarding and the like, and by making one of their officers available to serve on the board of directors. The cost of these services is about \$2,000 per month.

IV. Proposed Ownership of the Black PTC

We suggest that the Black PTC be owned by one of your existing trusts, such as the Black 2006 Family Trust.

V. Proposed Governance of Black PTC

The Black PTC would be governed by its board of directors in accordance with the provisions of the PTC's by-laws. The directors would select a slate of officers to run the day-to-day operations of the PTC. The PTC would have several separate committees, including an investment committee, a distribution committee, an audit committee and a trust committee. The directors would select the members of these committees.

The investment committee would determine how each trust's funds are invested and would monitor the performance of those investments. The relevant documents would make clear your intention to continue the present practice that trust funds be invested in family investment vehicles such as Black Family Partners, hedge funds and private equity funds, and art.

The distribution committee would determine how the Black PTC exercises the trustee powers under each of the trust agreements to make discretionary distributions to trust beneficiaries.

The audit committee would be responsible for the internal examination and audits of the PTC's activities, while the trust committee would supervise all of the PTC's fiduciary activities.

The officers would implement the decisions reached by the various committees.

In order to avoid the estate and gift tax issues that could arise if family members controlled distributions from the trusts, the by-laws of the Black PTC would provide that Black family members and persons related to them may not serve on the Black PTC's distribution committee.

VI. Possible Exit Opportunities

We believe that the proposed Black PTC and its governance structure would provide an effective arrangement for enabling the Black family trusts to continue to invest together after your death. We recognize, however, that, although this arrangement is intended to be permanent, over an extended period of time, it may be desirable to terminate or modify the arrangement. Accordingly, we believe it is appropriate to provide mechanisms that would allow certain individual family members to remove the Black PTC as trustee of certain trusts. For example, a mechanism could be provided that would give you, while you are alive and competent and, after your death or disability, Debra, the right to remove the Black PTC as trustee of any one or more

of the trusts. In addition, after the death or disability of you and Debra, we could provide a mechanism that would give a designated person (referred to as a “protector”) for each individual trust the right, exercisable no sooner than after the passage of a specified period of time after the death of the survivor of you and Debra, the power to give notice of an intention to remove the Black PTC as trustee of the trust and to replace it with another trustee.

VII. State Tax Issues

Current New York State and City income tax law subjects a trust to New York State and City income taxes if it consists of the property of an individual who was a New York City domiciliary at the time such property was transferred to the trust. Such a trust is referred to in the New York tax law as a “resident trust.” Section 605(b)(3)(D) of the New York Tax Law provides, however, that these taxes do not apply to a resident trust if the following requirements are met:

1. It has no trustees domiciled in New York.
2. It has no New York source income.
3. It has no physical assets located in New York State.

Because all of the subject trusts either have been or will be created and funded by you while you are a resident of New York City, the trusts will be New York resident trusts. As a result, if New York income taxes are to be avoided, the trusts must satisfy all three of these requirements.

The second two requirements can be satisfied by segregating any physical assets located in New York (such as your art) that would otherwise be held in the trust, as well as any investments that are likely to produce New York source income, in a separate trust that would be

subject to New York income taxes. The balance of the assets would produce income free of New York income taxes if the trustee is not a domiciliary of New York.

The domicile of a corporation has generally been believed to be its state of incorporation. If this general rule applied, the use of a trust company incorporated in Nevada would be sufficient to satisfy the no-New York domiciliary trustee requirement. Unfortunately, the New York State Tax Commission appears to be attempting to create a new rule to establish corporate domicile. In an advisory opinion issued with respect to the Rockefeller family trusts several years ago, the Tax Commission stated that, for purposes of the tax rule, the domicile of a corporation is

“the principal place from which the trade or business of the corporation is directed or managed. A corporation’s principal place of business is the location where the corporation manages, conducts, or directs its business. For example, a corporation manages, conducts or directs its business where the main office and regular meeting place of the board of directors is located, regardless of where the administrative departments and the physical property of the corporation are situated. A corporation’s principal place of business may be established by the activity of the corporation within New York State and the absence of a trade or business conducted by the corporation elsewhere. A corporation having its principal place of business in New York State is considered to be domiciled in New York State for purposes of section 605(b)(3)(D)(i)(I) of the Tax Law and section 105.23(c)(1) of the Regulations regardless of the state of incorporation.”

This position as to corporate domicile for state income tax purposes is merely the position of the New York State Tax Commission. Nevertheless, because it is possible that the New York State Tax Commission’s position may be upheld, it would be prudent to be prepared to operate the Black PTC in a manner that would make it clear that the company’s principal place of business is outside of New York.

To accomplish this, it would not be necessary to conduct any activities (beyond the minimal level of activities described above) in Nevada. Instead, a more convenient state, such as Connecticut or New Jersey, could be used. If all meetings of the board of directors and the various committees take place in Connecticut or New Jersey, the requirements set forth in the New York State Tax Commission's Advisory Opinion should be met. Responsibility for actual investment decisions can be delegated by contract to New York based providers, so long as investment performance is periodically monitored by the Black PTC's investment committee in meetings that take place outside of New York. Meetings in Connecticut or New Jersey can take place in conference rooms within local hotels or arrangements could be made to share office space for this purpose with other private trust companies that are conducting businesses in Connecticut or New Jersey.

VIII. Timing and Implementation

If a decision is made to use a PTC as a trustee of the various Black family trusts, we recommend that the Black PTC be created promptly and that, once it is formed, it serve as trustee of the Black family trusts that are now in existence and any additional trusts created by you during your life. Prompt implementation of these arrangements will permit the family to become accustomed to dealing with the Black PTC. Establishing a pattern of activity outside of New York State while most trust income continues to be taxed to you will help build a strong case that the Black PTC does not have a principal place of business within New York State, a position that will become important after your death when the trusts cease to be treated as grantor trusts.

As part of its effort to curb tax shelters, the Internal Revenue Service recently issued regulations that impose sanctions on attorneys who provide informal written tax advice without prominently disclosing that the advice cannot be relied upon by the taxpayer for the purpose of avoiding penalties. Because this memorandum contains a discussion of tax issues that we do not believe

warrants the significant additional time or expense that would be involved in the preparation of a formal opinion that complies with the IRS rules, we include the relevant IRS disclosure, below. If you would like us to prepare a formal tax opinion on which you may rely for penalty relief, please let us know, and we can discuss the cost of preparing one.

Internal Revenue Service Circular 230 Notice: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

cc: Eileen Alexanderson
Carlyn S. McCaffrey