

2021-3

ADMINISTRATIVE ORDER

§

IN THE PROBATE COURTS

2021-3

§

OF

§

DALLAS COUNTY, TEXAS

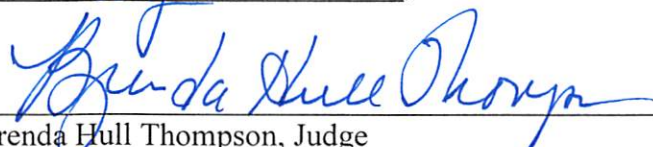
**ORDER FOR PROVISION OF GUIDANCE
REGARDING SAFEKEEPING AGREEMENTS**

The undersigned presiding judges of the Probate Courts of Dallas County, Texas, find that guidance is needed in connection with the submission of safekeeping agreements complying with Tex. Est. Code §§ 305.154-155 (safekeeping agreements for probate estates) and 1105.155-156 (safekeeping agreements for guardianship estates). It is therefore

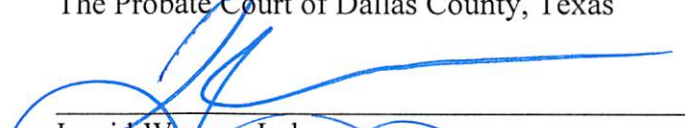
ORDERED, ADJUDGED, AND DECREED that the attached Dallas County Probate Courts Policy Regarding Safekeeping Agreements (“Safekeeping Agreement Policy”), General Guidance for Filing of Safekeeping Agreement Documents (“Safekeeping Agreement Guidance”), and Forms for Safekeeping Agreements and Orders shall be uploaded to the Dallas County Probate Courts website. It is further

ORDERED, ADJUDGED, AND DECREED that the Safekeeping Agreement Policy, Safekeeping Agreement Guidance, and Forms for Safekeeping Agreements and Orders shall be updated as the Probate Courts deem necessary and appropriate.

SIGNED 10th day of February, 2021



Brenda Hull Thompson, Judge
The Probate Court of Dallas County, Texas



Ingrid Warren, Judge
Probate Court No. 2 of Dallas County, Texas



Margaret Jones-Johnson, Judge
Probate Court No. 3 of Dallas County, Texas

DALLAS COUNTY PROBATE COURTS
POLICY REGARDING SAFEKEEPING AGREEMENTS

In the event that a fiduciary fails to qualify for the full amount of a bond required by the Probate Court in a given guardianship or estate proceeding, the Court may authorize the fiduciary to obtain a bond for the amount for which the fiduciary qualifies and then establish a "safekeeping agreement" with the financial institution in which the fiduciary has placed or will place the assets of a decedent or ward. This document sets forth the requirements associated with the establishment of such a safekeeping agreement, i.e., an agreement for enhanced protection and Court supervision of the preservation, management, and use of estate assets.

1. **Kind of Financial Institution.** Pursuant to Tex. Est. Code Ann. §§ 305.154 and 1105.155, the financial institution with which a safekeeping agreement is made must:
 - a. Have its main office or a branch office in Texas; and
 - b. Qualify to act as a depository in Texas under Texas or federal law. (To qualify as a depository, the financial institution must be a bank or savings association, the deposits for which are insured by the Federal Deposit Insurance Corporation ("FDIC"). See Tex. Fin. Code Ann. §§ 201.002(14), .101; 12 U.S.C. §§ 1813(c)(2), (3).)
An investment brokerage house, insurance company investment arm or division, or other investment vehicle not insured by the FDIC will not qualify as a financial institution for safekeeping agreement purposes under the provisions of Tex. Est. Code Ann. §§ 305.154 or 1105.155.

2. **Conditions Precedent to Signature of Safekeeping Agreement; Corporate Resolutions.** Before the submission of a safekeeping agreement to the Court and a Court's approval thereof, the financial institution must have in place or enact corporate resolutions:
 - a. Specifying the corporate positions authorized to execute safekeeping agreements on the financial institution's behalf; and
 - b. Expressly authorizing the signature of safekeeping agreements in connection with guardianship and probate estates.

3. **Contents of Safekeeping Agreement.** The safekeeping agreement executed on behalf of the financial institution must be substantially in the form of Exhibit "A" (for probate estates) or "B" (for estates in guardianship) attached and, at a minimum:
 - a. Identify the guardianship or probate account style, the last four digits of the account number, and the amount of assets on deposit in the account as of the date of the safekeeping agreement;
 - b. Have attached to the safekeeping agreement a copy of the corporate resolutions referenced in Section 2 above and their effective date;
 - c. Reflect the financial institution's commitment to maintain the assets of the estate of the decedent or ward and prohibit withdrawals (including, but not limited to, the payment of the financial institutions monthly fees and charges, if any) from the account by any fiduciary, beneficiary, or other person unless expressly authorized by the Court;
 - d. Identify by name the officers authorized to execute safekeeping agreements and certify the balance in the account that is the subject of the safekeeping agreement;
 - e. Commit the financial institution to notify the fiduciary and the Court of any change of personnel specified in Section 3(d);

- f. Commit the financial institution to notify the fiduciary and the Court prior to any dissolution, insolvency, merger, acquisition, or sale of all or substantially all of the financial institution's assets and any other significant change in the structure, ownership, or financial condition of the financial institution;
 - g. Require any other financial institution subsequently acquiring assets (including FDIC member institutions in the Insured Cash Sweep Network) or merging with the signatory financial institution to honor and be bound by the safekeeping agreement the same as if it had been an original signatory;
 - h. Not take any action that would release the principal or sureties on a bond from liability, or change the liability of the principal or sureties, as established by the terms of the bond;
 - i. Contain provisions agreeing that the financial institution shall be subject to the jurisdiction of and venue in the Dallas County Probate Courts;
 - j. Commit the financial institution to amend or update the corporate resolutions and/or safekeeping agreement upon order of the Court; and
 - k. Not terminate the safekeeping agreement or close the subject account without a Court order.
4. Filing of Safekeeping Agreement. Every signed safekeeping agreement and associated corporate resolutions shall be filed in the case with which such agreement is associated and must be approved by the Court to be effective. In any case involving multiple defendants, however, e.g., wrongful death or survivor actions, the Court may, in its discretion, permit in camera submission of safekeeping agreement terms until settlement or conclusion of all matters in the proceedings.
 5. Amendment and Updating of Corporate Resolutions and Safekeeping Agreement. During the pendency of a case in which a safekeeping agreement has been executed, the Court shall be entitled to order the amendment and updating of such agreement and/or associated corporate resolutions at any time.
 6. Court Motion and Order for Withdrawal. Before any withdrawal from an account made the subject of a safekeeping agreement, the guardian or personal representative of a decedent's estate must file a motion and obtain an order authorizing any such withdrawal.
 7. Action without Safekeeping Agreement Void. No action by a fiduciary shall be authorized or effective in any case in which the fiduciary is required to establish a safekeeping agreement unless and until the requirements set forth above in this policy are satisfied.
 8. Termination of Safekeeping Agreement; Closure of Account. A safekeeping agreement shall be terminated and the account made the subject of the safekeeping agreement shall be closed only upon order of the Court.

GENERAL GUIDANCE FOR FILING OF SAFEKEEPING AGREEMENT DOCUMENTS

To facilitate understanding of and compliance with Tex. Est. Code §§ 305.154-.155 (safekeeping agreements in probate estates) and 1105.155-.156 (safekeeping agreements in guardianships), the Probate Courts have developed the Dallas County Probate Courts Policy Regarding Safekeeping Agreements ("Policy"). The Policy spells out in detail the conditions and requirements for approval of safekeeping agreements pursuant to the referenced Texas Estates Code provisions. This General Guidance provides instructions for submission of safekeeping documents to the Probate Courts.

Following are forms for safekeeping agreements and proposed orders that are consistent with the Policy. Several points bear noting:

1. It is counsel's responsibility to draft an application that complements the language in the proposed agreement and order. For instance, each form of orders appearing following this General Guidance describes the relief requested in the application. Thus, the application prepared by counsel should contain a correlating request for relief.
2. The safekeeping agreement forms refer to attached Depository documents. Counsel should be sure that the Depository provides documents for attachment that contain the provisions described in the safekeeping agreement. For instance, a Depository may have a standing resolution authorizing individuals in particular positions to sign documents. That resolution should be attached to the agreement as a supporting document. Care should be taken, however, to assure that Depository officers have reviewed the provisions required for the safekeeping agreement to be approved. Then, a resolution should be attached that clearly authorizes the signatory Depository officer to sign the agreement with those provisions.
3. At times, the amounts deposited will total more than \$250,000, thereby exceeding the FDIC-insured amount. The Insured Case Sweep ("ICS") Deposit Placement Agreement and ICS Network exist to provide FDIC protection in just such situations. ICS-related provisions appear in brackets in the attached agreements and orders for cases in which deposit amounts exceed \$250,000. Similarly, provisions appear in brackets in the form orders for cases in which settlement funds are to be deposited under the circumstances set forth in Paragraph 4 of the Policy. Bracketed provisions should be deleted if they do not apply to a given case at bar.
4. The attached agreements and orders are suggested forms. Counsel is free to revise and refine them both to fit the particular case involved and still comply with statutory provisions and the Policy. (It is recommended that proposed documents pertaining to the establishment of a safekeeping agreement be submitted to the Court for review.)
5. After the Court signs an order approving safekeeping documents, counsel should monitor the safekeeping agreement's implementation. For instance, if a Depository merges with another institution, counsel should be sure that the Court is notified and the other institution agrees to comply with the safekeeping agreement made by the merging Depository. As another example, if a withdrawal from the account made the subject of the safekeeping agreement is contemplated, counsel should assure that an authorizing order is submitted to the Court prior to the withdrawal.

This General Guidance and the attached forms do not constitute legal advice. It is the responsibility of counsel to read the relevant statutory provisions contained in Tex. Est. Code §§ 305.154-.155 and 1105.155-.156 and any related case law, apply them to the case in which counsel is serving, and assure that documents and procedures are compliant with the law.

CAUSE NO. PR- _____

IN THE GUARDIANSHIP OF

AN INCAPACITATED PERSON.

§
§
§
§
§

IN THE PROBATE COURT

NO. _____

DALLAS COUNTY, TEXAS

SAFEKEEPING AGREEMENT

TO THE HONORABLE COURT:

This Safekeeping Agreement ("Agreement") is made as of the _____ of _____, 20____. As of the date of this Agreement, the undersigned Depository, which has its main office or a branch office in Texas and qualifies as an FDIC-insured bank or savings association under the laws of the State of Texas or United States, holds on deposit as of the date of this Agreement, \$_____ in the name of _____, Guardian of the Estate of _____, An Incapacitated Person ("Ward"), in an account the last four digits of which are _____ (the "Account").

This Agreement is authorized pursuant to the corporate resolution(s) of the Depository attached hereto as Exhibit "1."

While this Agreement is in force and effect, the Depository shall maintain the assets of the Ward's estate and prohibit withdrawals of any kind from the Account (including, but not limited to, the payment of the Depository's monthly fees and charges, if any) or any other account subject to this Agreement that contains Ward's funds unless expressly authorized by Court order, a certified copy of which must be delivered to the Depository. Without prior written Court order, the Depository shall not be authorized to disclose information regarding the funds held pursuant to this Agreement to third parties other than the Court, the Guardian, the Guardian's counsel, or the Depository's regulators in the normal course of their supervisory oversight.

The following individuals are authorized to execute safekeeping agreements on behalf of the Depository and certify the balance in the Account to the Court:

SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN THE GUARDIANSHIP OF _____, AN INCAPACITATED PERSON

Name

Title

The Depository will notify the Guardian of the Estate of the Ward and the Court of any change of signatory personnel listed above in this Agreement.

The Depository shall notify the Guardian of the Estate and the Court immediately prior to any dissolution, insolvency, merger, acquisition, or sale of all or substantially all of the Depository's assets and any other significant change in the structure, ownership, or financial condition of the Depository. In the event another depository acquires assets or merges with the undersigned Depository, the Depository shall require that depository to honor and be bound by this agreement the same as if it had been an original signatory.

The Depository shall not take any action that would release the principal or sureties on the bond posted by the Guardian of the Estate from liability or change the liability of the Guardian of the Estate or sureties, as established by the terms of the bond.

The Depository further agrees that it (1) is subject to the jurisdiction of and venue in the Dallas County Probate Courts for purposes of the above-styled and numbered cause, and (2) shall amend this Agreement and its corporate resolution(s) upon order of the Court.

The Depository shall not terminate this Agreement or close the Account without an order of this Court.

[The Depository shall maintain sole control over all of the funds on deposit that are held pursuant to this Agreement and that are placed in the Insured Cash Sweep ("ICS") Network or other FDIC member institutions. The Depository shall deposit all funds of Ward that are placed in the ICS Network only in depositories that also qualify as FDIC-insured depositories.]

The Depository further certifies that all facts and recitations in this Safekeeping Agreement are true and correct and, by the signature of the officer below, agrees to abide by its terms and limitations and of the Order and all subsequent Orders issued by the Court to the Depository concerning the assets of the Estate that

SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN THE GUARDIANSHIP OF _____, AN INCAPACITATED PERSON

are to be maintained under safekeeping. The Depository recognizes that its violation of this Agreement or the Court's orders may subject it to liability for any losses or other forms of injury sustained as a result of such violation.

SIGNED as of the date first written above.

(NAME OF DEPOSITORY)

PRINTED NAME: _____
TITLE: _____
CERTIFYING OFFICIAL

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 20____,
by _____, in his/her capacity as _____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
Printed Name: _____

APPROVED on _____, 20____.

JUDGE PRESIDING

CAUSE NO. PR-_____

IN THE GUARDIANSHIP OF

§
§
§
§
§

IN THE PROBATE COURT

NO. _____

AN INCAPACITATED PERSON.

DALLAS COUNTY, TEXAS

ORDER GRANTING APPLICATION FOR APPROVAL OF SAFEKEEPING AGREEMENT

On this day the Court considered the Application for Approval of Safekeeping Agreement ("Application") filed herein by _____, Guardian of the Estate ("Guardian") for _____, An Incapacitated Person ("Ward") requesting that this Court: (1) approve the safekeeping agreement ("Safekeeping Agreement") with _____ ("Depository") to be submitted herein [in camera] for the deposit of Ward's funds in one or more Depository accounts; (2) order the Guardian to deposit the \$_____ in the name of _____, Guardian of the Estate of _____, An Incapacitated Person, in a Depository account (the "Account"), the last four digits of which are _____, in accordance with Tex. Est. Code §§ 1105.155-.156; [OR *if settlement funds are to be deposited*: (2) order the Guardian to deposit the Settlement Funds (as defined below) into one or more accounts in and under such Safekeeping Agreement in accordance with Tex. Est. Code §§ 1105.155-.156; [*if funds exceed the FDIC-insured amount of \$250,000 and, in the interest of protection of amounts in excess of such insured amount, are proposed in the application to be deposited in other institutions, add*: and (3) authorize and direct the Guardian to execute the Insured Case Sweep ("ICS") Deposit Placement Agreement appointing Depository as custodian of all ICS Network accounts into which the Ward's funds are deposited and which are held pursuant to a safekeeping agreement.] The Court, having considered the Application, the arguments and authorities submitted, and all documents on file, finds the Application is well-taken and should be granted and approved. The Court further finds that the deposit of the funds for safekeeping is in the best interest of the Ward's Estate. The Court further finds that the Safekeeping Agreement submitted herein [in camera] should be approved in all respects. [OR The Court further finds that the deposit of the funds received

ORDER GRANTING APPLICATION FOR APPROVAL OF SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN THE GUARDIANSHIP OF _____, AN INCAPACITATED PERSON

from the settlement approved by this Court on _____, 20__ (the "Settlement Funds") for safekeeping is in the best interest of the Estate and the Safekeeping Agreement in the form submitted in camera meets with the requirements as set forth in Tex. Est. Code Tex. Est. Code §§ 1105.155-.156.] [The Court further finds that the deposit of the Ward's funds in the ICS Network that allows for federally insured deposit, is necessary to protect the assets of the Ward's Estate.] It is therefore

ORDERED, ADJUDGED AND DECREED that the Safekeeping Agreement [in camera] be and it is hereby approved in all respects. It is further

[**ORDERED, ADJUDGED AND DECREED** that the ICS Deposit Placement Agreement submitted herein {in camera} is approved in all respects. It is further]

[**ORDERED, ADJUDGED AND DECREED** that the Guardian be and is hereby authorized and directed to execute the ICS Deposit Placement Agreement with Depository naming it as the custodian of Ward's funds, subject to the Safekeeping Agreement. It is further]

ORDERED, ADJUDGED, AND DECREED that:

1. Depository shall have sole control over all of Ward's funds on deposit that are held pursuant to the Safekeeping Agreement [and placed in the ICS Network at other FDIC member institutions];
and
2. Without a prior written order of the Court, Depository shall not (1) allow withdrawals from any account containing funds belonging to the Ward's estate and that are held pursuant to the Safekeeping Agreement; or (2) terminate the Safekeeping Agreement or close the Account. [; and
3. All funds placed in the ICS Network will be placed at depositories that also qualify as FDIC-insured depositories.]

JUDGE PRESIDING

CAUSE NO. PR-_____

IN RE ESTATE OF

§
§
§
§
§

IN THE PROBATE COURT

NO. _____

DECEASED.

DALLAS COUNTY, TEXAS

SAFEKEEPING AGREEMENT

TO THE HONORABLE COURT:

This Safekeeping Agreement ("Agreement") is made as of the _____ of _____, 20____. As of the date of this Agreement, the undersigned Depository, which has its main office or a branch office in Texas and qualifies as an FDIC-insured bank or savings association under the laws of the State of Texas or United States, holds on deposit as of the date of this Agreement, \$ _____ in the name of _____, Dependent/Independent Administrator/Executor ("Administrator/Executor") of the Estate of _____, Deceased ("Estate"), in an account the last four digits of which are _____ (the "Account").

This Agreement is authorized pursuant to the corporate resolution(s) of the Depository attached hereto as Exhibit "1."

While this Agreement is in force and effect, the Depository shall maintain the assets of the Estate and prohibit withdrawals of any kind from the Account (including, but not limited to, the payment of the Depository's monthly fees and charges, if any) or any other account subject to this Agreement that contains Estate funds unless expressly authorized by Court order, a certified copy of which must be delivered to the Depository. Without prior written Court order, the Depository shall not be authorized to disclose information regarding the funds held pursuant to this Agreement to third parties other than the Court, the Administrator/Executor, the Administrator/Executor's counsel, or the Depository's regulators in the normal course of their supervisory oversight.

The following individuals are authorized to execute safekeeping agreements on behalf of the Depository and certify the balance in the Account to the Court:

SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN THE ESTATE OF _____, DECEASED

Name

Title

The Depository will notify the Administrator/Executor and the Court of any change of signatory personnel listed above in this Agreement.

The Depository shall notify the Administrator/Executor and the Court immediately prior to any dissolution, insolvency, merger, acquisition, or sale of all or substantially all of the Depository's assets and any other significant change in the structure, ownership, or financial condition of the Depository. In the event another depository acquires assets or merges with the undersigned Depository, the Depository shall require that depository to honor and be bound by this agreement the same as if it had been an original signatory.

The Depository shall not take any action that would release the principal or sureties on the bond posted by the Administrator/Executor from liability or change the liability of the Administrator/Executor or sureties, as established by the terms of the bond.

The Depository further agrees that it (1) is subject to the jurisdiction of and venue in the Dallas County Probate Courts for purposes of the above-styled and numbered cause, and (2) shall amend this Agreement and its corporate resolution(s) upon order of the Court.

The Depository shall not terminate this Agreement or close the Account without an order of the Court.

[The Depository shall maintain sole control over all of the funds on deposit that are held pursuant to this Agreement and that are placed in the Insured Cash Sweep ("ICS") Network or other FDIC member institutions. The Depository shall deposit all funds of the Estate that are placed in the ICS Network only in depositories that also qualify as FDIC-insured depositories.]

The Depository further certifies that all facts and recitations in this Safekeeping Agreement are true and correct and, by the signature of the officer below, agrees to abide by its terms and limitations and of the Order and all subsequent Orders issued by the Court to the Depository concerning the assets of the Estate that are to be maintained under safekeeping. The Depository recognizes that its violation of this Agreement or the

SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN THE ESTATE OF _____, DECEASED

Court's orders may subject it to liability for any losses or other forms of injury sustained as a result of such violation.

SIGNED as of the date first written above.

(NAME OF DEPOSITORY)

PRINTED NAME: _____
TITLE: _____
CERTIFYING OFFICIAL

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 20____,
by _____, in his/her capacity as _____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
Printed Name: _____

APPROVED on _____, 20____.

JUDGE PRESIDING

CAUSE NO. PR-_____

IN RE ESTATE OF

§

IN THE PROBATE COURT

§

§

NO. _____

§

DECEASED.

§

DALLAS COUNTY, TEXAS

ORDER GRANTING APPLICATION FOR APPROVAL OF SAFEKEEPING AGREEMENT

On this day the Court considered the Application for Approval of Safekeeping Agreement ("Application") filed herein by _____, Dependent/Independent Administrator/Executor ("Administrator" or "Executor") of the Estate of _____, Deceased ("Estate"), requesting that this Court: (1) approve the safekeeping agreement ("Safekeeping Agreement") with _____ ("Depository") attached hereto as Exhibit "A," and (2) order the Administrator/Executor to deposit the \$_____ in the name of _____ as Administrator/Executor of the Estate in a Depository account the last four digits of which are _____ (the "Account"), in accordance with Tex. Est. Code §§ 305.154-.155 [OR *if settlement funds are to be deposited:* (2) order the Administrator/Executor to deposit the Settlement Funds (as defined below) into one or more accounts in and under such Safekeeping Agreement in accordance with Tex. Est. Code §§ 305.154-.155;] [*if funds exceed the FDIC-insured amount of \$250,000 and, in the interest of protection of amounts in excess of such insured amount, are proposed in the application to be deposited in other institutions, add:* and (3) authorize and direct the Administrator/Executor to execute the Insured Case Sweep ("ICS") Deposit Placement Agreement appointing Depository as custodian of all ICS Network accounts into which the Estate's funds are deposited and which are held pursuant to a safekeeping agreement.] The Court, having considered the Application, the arguments and authorities submitted, and all documents on file, finds the Application is well-taken and should be granted and approved. The Court further finds that the deposit of the funds for safekeeping is in the best interest of the Estate. The Court further finds that the Safekeeping Agreement submitted herein [in camera] should be approved in all respects. [OR The Court further finds that the deposit of the funds received from the settlement approved by this Court on _____, 20__ (the "Settlement Funds") for safekeeping is in the best interest of the Estate and the

ORDER GRANTING APPLICATION FOR APPROVAL OF SAFEKEEPING AGREEMENT

CAUSE NO. _____; IN RE ESTATE OF _____, DECEASED

Safekeeping Agreement in the form submitted in camera meets with the requirements as set forth in Tex. Est. Code Tex. Est. Code §§ 305.154-.155.] [The Court further finds that the deposit of Estate funds in the ICS Network that allows for federally insured deposits is necessary to protect the assets of the Estate.] It is therefore

ORDERED, ADJUDGED AND DECREED that the Safekeeping Agreement be and it is hereby approved in all respects. It is further

[**ORDERED, ADJUDGED AND DECREED** that the ICS Deposit Placement Agreement submitted herein {in camera} is approved in all respects. It is further]

[**ORDERED, ADJUDGED AND DECREED** that the Administrator/Executor be and is hereby authorized and directed to execute the ICS Deposit Placement Agreement with Depository naming it as the custodian of the Estate's funds, subject to the Safekeeping Agreement. It is further]

ORDERED, ADJUDGED, AND DECREED that:

1. Depository shall have sole control over all Estate funds on deposit that are held pursuant to the Safekeeping Agreement [and placed in the ICS Network at other FDIC member institutions];
2. Without a prior written order of the Court, Depository shall not (1) allow withdrawals from any account containing funds belonging to the Estate and that are held pursuant to the Safekeeping Agreement; or (2) terminate the Safekeeping Agreement or close the Account.[]; and
3. All funds placed in the ICS Network will be placed at depositories that also qualify as FDIC-insured depositories.]

JUDGE PRESIDING