Economic Overview

March 2009

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WELLS CAPITAL MANAGEMENT

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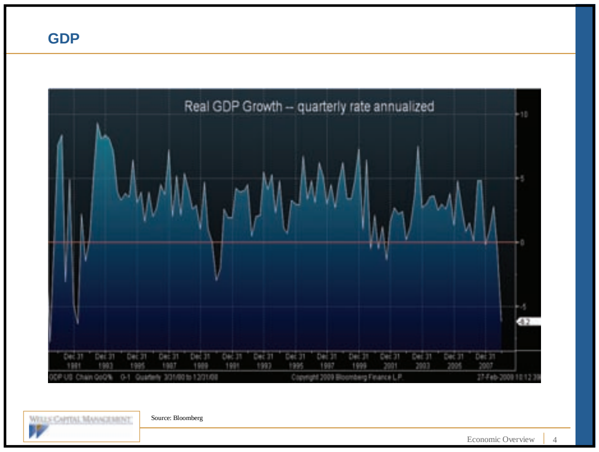
Wells Capital Management Fixed Income Group

Big Six Summary

- Growth: severe recession
- Employment: dropping sharply
- Inflation: headline flat, core drifting lower
- Monetary: quantitative easing
- Fiscal: massive deficit spending
- International: global recession

Growth


GDP
Real GDP Growth – quarterly rate annualized
Source: Bloomberg
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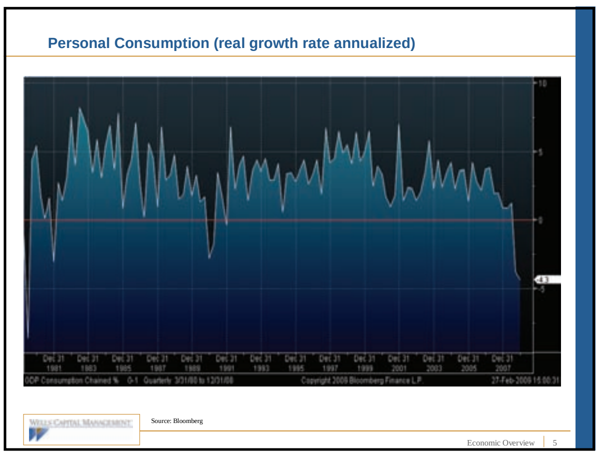
Personal Consumption (real growth rate annualized)
Source: Bloomberg
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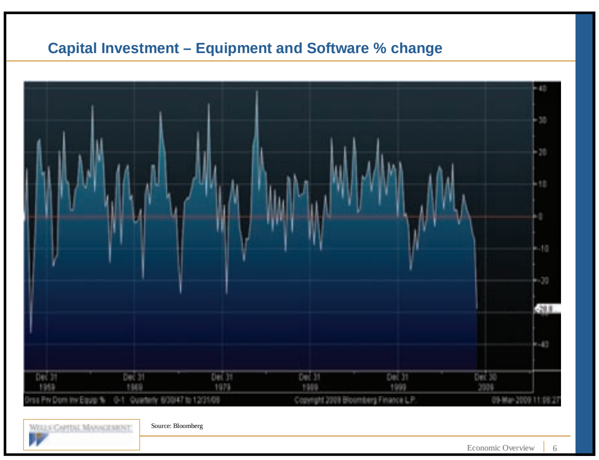
Capital Investment – Equipment and Software % change
Source: Bloomberg
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New Home Sales

Source: Bloomberg

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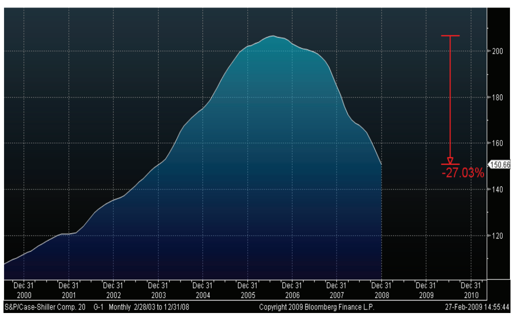
S&P/CaseShiller Home Price Index

Top 20 Metropolitan Areas



Source: Bloomberg

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Employment

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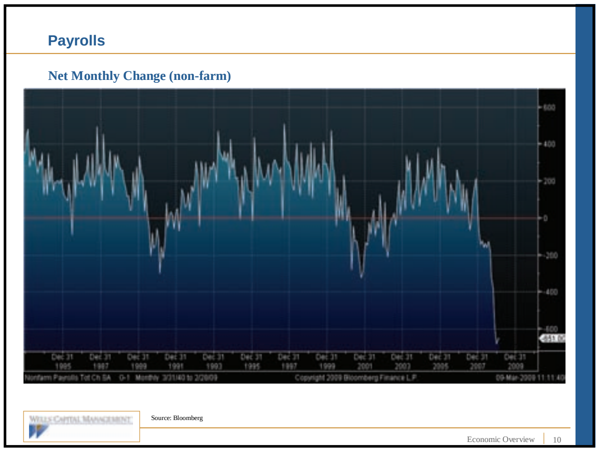
Payrolls
Net Monthly Change (non-farm)
Source: Bloomberg
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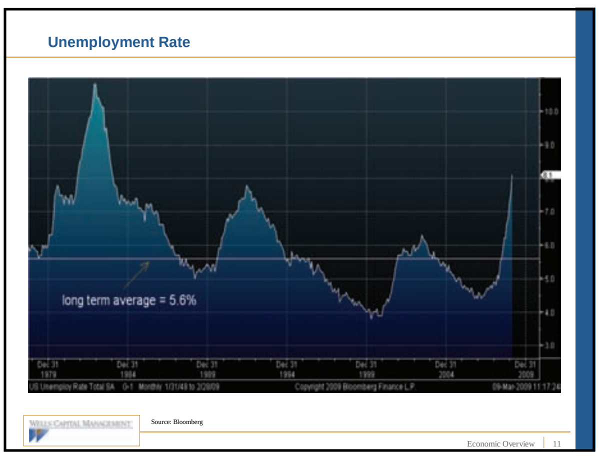
Unemployment Rate
long term average = 5.6%
Source: Bloomberg
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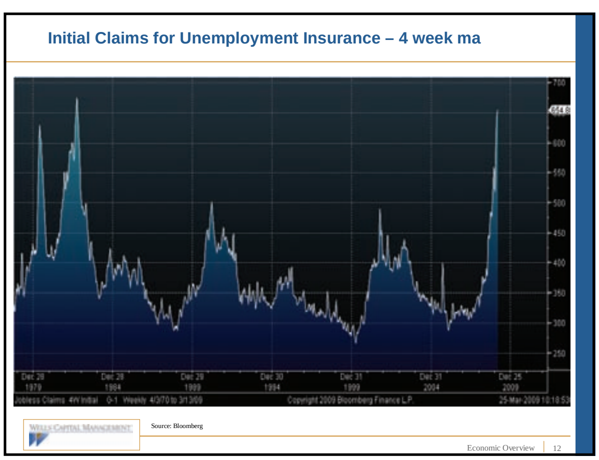
Initial Claims for Unemployment Insurance – 4 week ma
Source: Bloomberg
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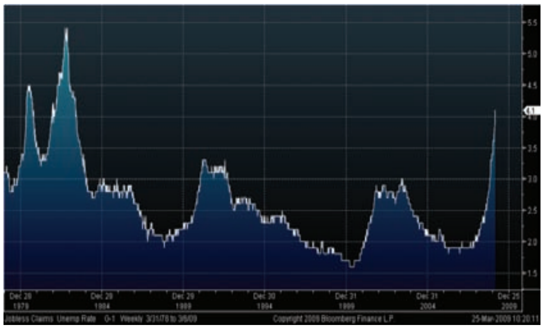
Insured Unemployment Rate



Source: Bloomberg

Broad vs. Narrow Unemployment Rates

Source: Bloomberg

Inflation


CPI YOY
Source: Bloomberg
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Crude Oil
West Texas Intermediate Spot Price
-78.22%
Source: Bloomberg
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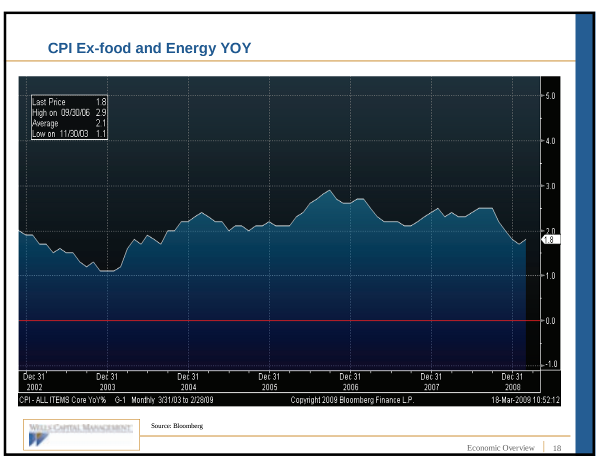
CPI Ex-food and Energy YOY
Last Price 1.8
High on 09/30/06 2.9
Average 2.1
Low on 11/30/03 1.1
Source: Bloomberg
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Inflation: The Long Term Picture

Source: Bloomberg

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Monetary Policy

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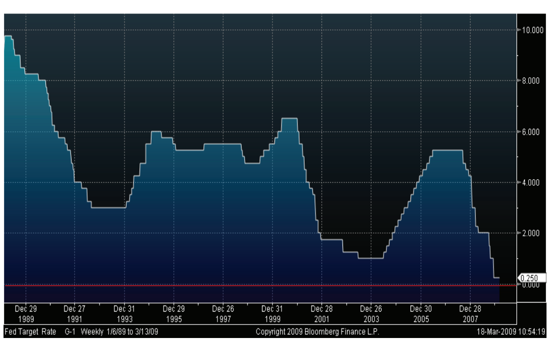
Federal Funds Rate Target



Source: Bloomberg

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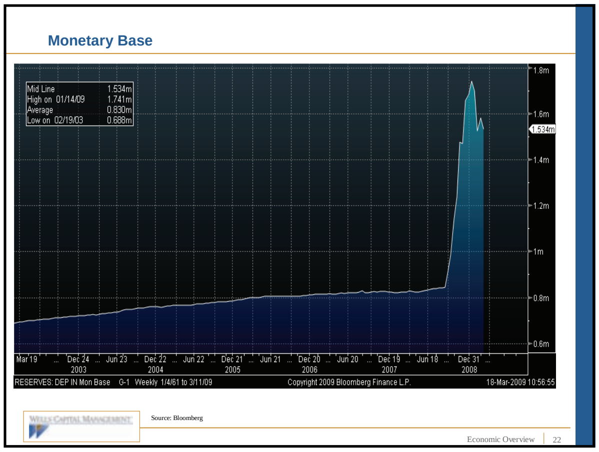
Monetary Base
Mid Line 1.534m
High on 01/14/09 1.741m
Average 0.830m
Low on 02/19/03 0.688m
RESERVES: DEP IN Mon Base G-1 Weekly 1/4/61 to 3/11/09
Copyright 2009 Bloomberg Finance L.P.
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Source: Bloomberg
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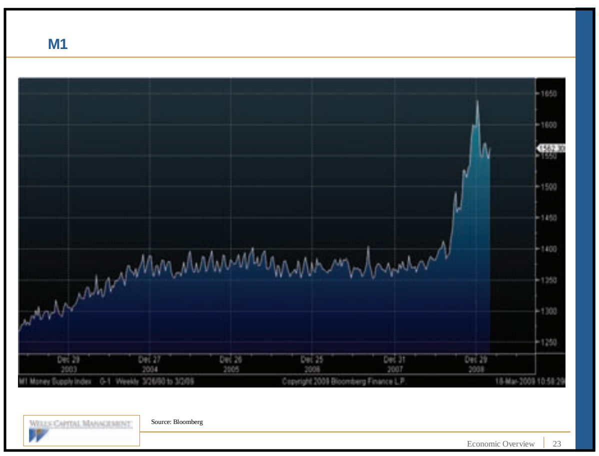
M1
Source: Bloomberg
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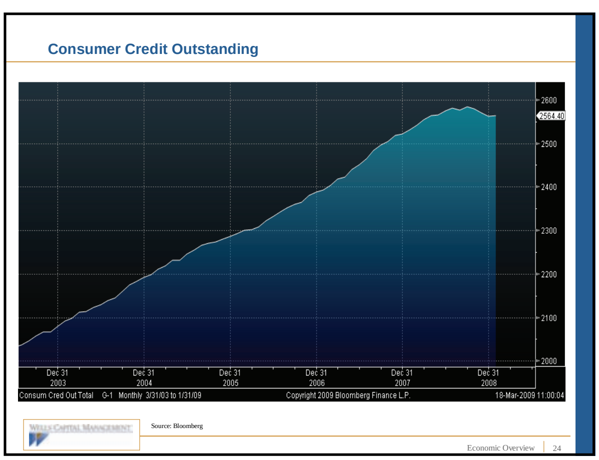
Consumer Credit Outstanding
Consum Cred Out Total G-1 Monthly 3/31/03 to 1/31/09
Copyright 2009 Bloomberg Finance L.P.
18-Mar-2009 11:00:04
Source: Bloomberg
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Fiscal Policy

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The Current Fiscal Situation

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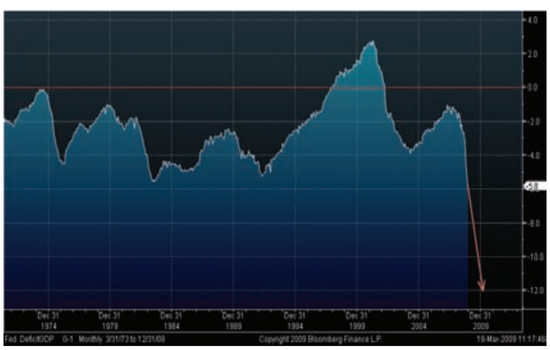
U.S. Federal Surplus/Deficit as a % of GDP

With Projection for 2009



Wells Capital Management

Source: Bloomberg

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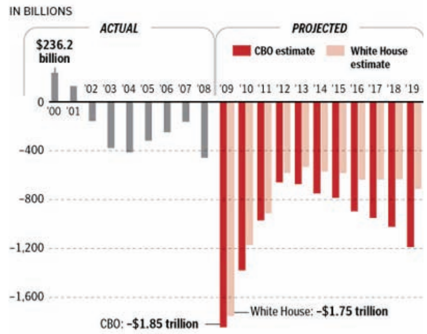
Deficit Projections – Obama Budget



Source: Heritage Foundation

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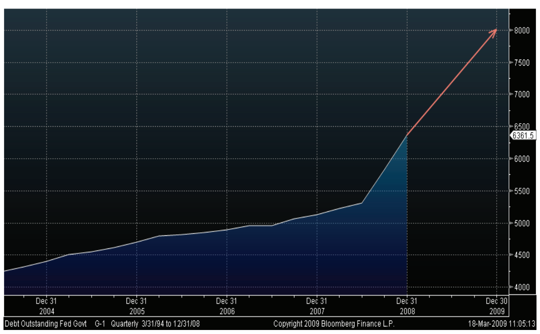
Federal Debt Outstanding - projected



Source: Bloomberg

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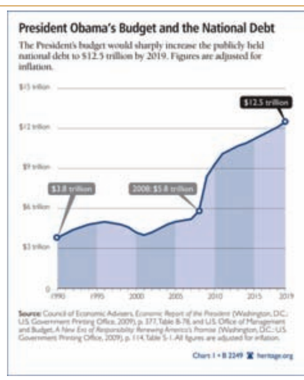
U.S. Federal Debt Projection



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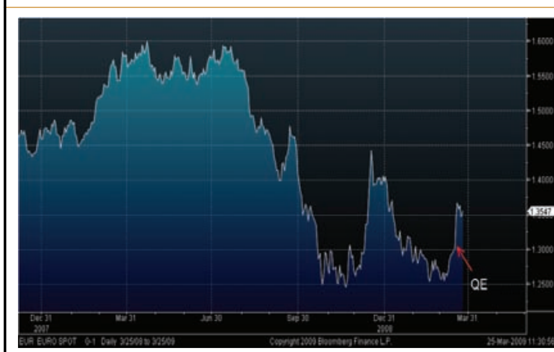
International

Global Data Cross Section

	GDP yoy	CPI yoy	IP yoy	Unemployment
Eurozone	-1.3%	+1.1%	-12.0%	8.2%
Japan	-4.3%	0.0%	-30.8%	4.1%
UK	-1.9%	+3.0%	-11.4%	6.3%
U.S.	-0.8%	0.2%	-11.5%	8.1%

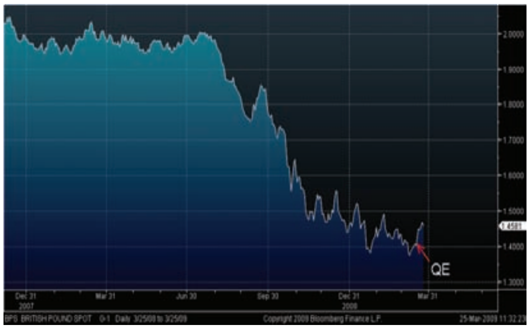
Source: Bloomberg

Euro vs. US Dollar



Source: Bloomberg

UK Pound vs. US Dollar



Source: Bloomberg

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Outlook

- **Scenario 1:** Monetary easing fails to gain traction, money multiplier continues to fall, real activity declines = Depression
- **Scenario 2:** Monetary easing gains traction, credit creation kicks off strong real growth, debt to income burden is gradually reduced, Fed withdraws liquidity in a timely fashion so that inflation remains in the 0-2% range = Goldilocks
- **Scenario 3:** Monetary easing gains some traction leading to modest growth, Fed continues easy policy in an effort to get up to potential growth, inflation gradually increases to uncomfortable level (5-10%) = Stagflation
- **Scenario 4:** Monetary easing fails to gain traction, but the combination of fiscal and monetary irresponsibility provokes a crisis of confidence in the dollar, real activity falls further, inflation spikes to double digits, = Banana Republic

Depression	Goldilocks	Stagflation	Banana Republic
15%	30%	30%	25%

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SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES

FDIC INSURANCE: WHAT WORKS AND WHAT DOESN'T

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I. Basic Coverage

A. What Works

1. Basic insurance coverage

a. $100,000 per account

b. $250,000 for employee benefit plans

2. Temporary increase in coverage

a. $250,000 ceiling

b. 100% coverage of non-interest bearing transaction accounts

B. What Doesn't Work

1. Ignoring accrued interest. Interest is not insured separately.

2. Funds swept to accounts located outside the United States

II. Multiplying Insurance Coverage

A. What Works

1. Accounts in different banks

2. Joint accounts

B. What Doesn't Work

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1. Different deposit accounts (e.g., checking and savings accounts) in the name of the same depositor

2. Variations in the name of the same depositor

3. Accounts in different branches of the same bank

4. Relying on the temporary increase in coverage for banks which have opted out of the FDIC's temporary liquidity guarantee program. Check the FDIC's website.

5. Reliance on the temporary increase in coverage after December 31, 2009

III. Pass-through Coverage for Trust Accounts

A. What Works

1. Pass-through coverage for fiduciary accounts, if the account records of the bank (or the title of the account) sufficiently indicate the fiduciary relationship, and the interests of the beneficiaries are clear from records kept in good faith and the regular course of business by the bank, the depositor or a third party who acts for the depositor.

B. What Doesn't Work

1. Failure to consider the beneficiary's other deposits in the same bank

2. Pass-through coverage for multi-tiered fiduciary relationships unless the bank's records (preferably the account title) either describes each and every level of fiduciary relationship or calls attention to the possibility of multi-tiered fiduciary relationships, and appropriate records are kept at each level. No claim of fiduciary capacity will be recognized unless the possible existence of such a relationship is disclosed at some previous level in the chain.

3. Pass-through coverage for registered investment companies

IV. Joint Accounts

A. What Works

1. Expanding deposit insurance coverage by maintaining both individual and joint accounts in the same bank

B. What Doesn't Work

1. Relying on joint accounts if both parties do not have a current right to withdraw funds

2. Relying on joint accounts if both parties have not signed signature cards

3. Relying on different joint accounts with different people

V. Employee Benefit Plan Accounts

A. What Works

1. Separate "pass-through" coverage of the non-contingent interests of beneficiaries in:

a. Individual retirement accounts

b. Eligible deferred compensation plan accounts (IRC § 457)

c. Defined contribution plan accounts (ERISA § 3(34))

d. Keogh plan accounts to the extent that participants and beneficiaries have the right to direct investments

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPOSIT INSURANCE COVERAGE

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INTRODUCTION

This outline encompasses most topics pertinent to FDIC insurance coverage. Please note, however, it does not cover all topics. This outline does not include provisions specific to deposits made on behalf of government entities or provisions specific to deposits made by the Bureau of Indian Affairs for the Department of the Interior. It also does not include provisions providing penalties for institutions that make false advertisements with regard to their FDIC insurance status or the levels of insurance provided. And it does not include provisions regarding the assessments that are due to the FDIC from insured depository institutions.

1. Section 330.1[1] – Definitions.

For the purposes of this part:

a. Act means the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

b. Corporation means the Federal Deposit Insurance Corporation.

c. Default has the same meaning as provided under section 3(x) of the Act.

d. Deposit has the same meaning as provided under section 3(l) of the Act.

e. Deposit account records means account ledgers, signature cards, CDs, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

f. FDIC means the Federal Deposit Insurance Corporation.

g. Independent activity. A corporation, partnership or unincorporated association is engaged in an "independent activity" if it is operated primarily for some purpose other than to increase deposit insurance.

h. Insured branch means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

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[1] Sections herein refer to 12 CFR 330 unless otherwise noted.

i. Insured deposit has the meaning provided under section 3(m)(1) of the Act.

j. Insured depository institution is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

k. Natural person means a human being.

l. Non-contingent trust interest means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in Sec. 20.2031-7 of the Federal Estate Tax Regulations or any similar present worth or life expectancy tables which may be adopted by the IRS.

m. Person means a natural person or other legal person (such as a business entity).

n. Sole proprietorship means a form of business in which one person owns all the assets of the business.

o. Standard maximum deposit insurance amount, referred to as “the SMDIA” hereafter, means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act. The current SMDIA is $100,000. (Note that as described below through December 31, 2009 under the Emergency Economic Stabilization Act of 2008 the SMDIA is temporarily increased to $250,000.) All the examples herein use the current SMDIA of $100,000.

p. Trust estate means the determinable and beneficial interest of a beneficiary or principal in rust funds but does not include the beneficial interest of an heir or devisee in a decedent’s estate.

q. Trust funds means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

r. Trust interest means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

2. Section 330.3 – General principles.

a. Ownership rights and capacities.

All deposits by or for a depositor(s) in an insured depository institution which are maintained in the same right and capacity will be added together. Deposits maintained in different rights and capacities, as recognized under this part, will be insured separately from each other. (Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

b. Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.

Any deposit accounts maintained by a depositor at one institution are insured separately from any deposit accounts that the same depositor maintains at any other separately chartered and insured institution, even if those institutions are affiliated through common ownership. (Example: Two banks owned by the same bank holding company.)

The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are added together and not separately insured.

c. Deposits maintained by foreigners or denominated in foreign currency.

Any person or entity that maintains deposits in an insured depository institution is entitled to deposit insurance. Deposit insurance for deposits denominated in a foreign currency will be determined and paid in the equivalent amount of United States dollars as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified will be used for such conversions.

d. Deposits in insured branches of foreign banks.

Deposits in an insured branch of a foreign bank which are payable by contract in the United States will be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly

owned subsidiary of the foreign bank, will not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank will be added together for the purpose of determining the amount of deposit insurance.

e. Deposits payable solely outside of the U.S. and certain other locations.

Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

f. International banking facility deposits.

An “international banking facility time deposit,” as defined in Regulation D is not a deposit for this part.

g. Bank investment contracts.

As required by section 11(a)(8) of the Act, any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits “benefit responsive withdrawals or transfers” are not insured deposits for purposes of this part. The term “substantial penalty or adjustment” used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

h. Application of state or local law to deposit insurance determinations.

In general, deposit insurance is for the benefit of the owner(s) of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, it is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution and of the provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

i. Determination of the amount of a deposit.

i. **<u>General rule</u>.** The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution would have paid if the deposit had matured on that date. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose will be whatever rate was paid in the immediately preceding payment period.

ii. **<u>Discounted CD</u>.** The amount of a CD sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

iii. **<u>Waiver of minimum requirements</u>.** In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing will be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

j. Continuation of insurance coverage following the death of a deposit owner.

The death of a deposit owner will not affect the insurance coverage of the deposit for a period of six months following the owner's death unless the deposit account is restructured. The operation of this grace period, however, will not result in a reduction of coverage. If an account is not restructured within six months after the owner's death, the insurance will be provided on the basis of actual ownership in accordance with the provisions of Sec. 330.5(a)(1).

3. Section 330.4 – Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

a. The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

b. The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

4. Section 330.5 – Recognition of deposit ownership and fiduciary relationships.

a. Recognition of deposit ownership.

i. **Evidence of deposit ownership.** Except as indicated in this paragraph (a)(1) or as provided in Sec. 330.3(j), in determining the amount of insurance available to each depositor, the FDIC will presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records will be considered binding on the depositor, and the FDIC will consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual ownership.

ii. **Recognition of deposit ownership in custodial accounts.** In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent his share of the total commingled funds.

b. Fiduciary relationships.

i. **Recognition.** The FDIC will recognize a claim for insurance coverage based on a fiduciary relationship only if the relationship is expressly disclosed, by way of specific references, in the deposit account records of the insured depository institution. Such relationships include, but are not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited. The express indication that the account is held in a fiduciary capacity will not be necessary, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

ii. **Details of fiduciary relationships.** If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

iii. **Multi-tiered fiduciary relationships.** In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(1) One method is to:

(a) Expressly indicate, on the insured depository institution's deposit account records, the existence of each and every level of fiduciary relationships; and

(b) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(2) An alternative method is to:

(a) Expressly indicate, on the insured depository institution's deposit account records, that there are multiple levels of fiduciary relationships;

(b) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(c) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

iv. **Exceptions**.

(1) **Deposits evidenced by negotiable instruments**. If any deposit obligation of an insured depository institution is evidenced by a negotiable CD, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his claim. Receipt of a negotiable instrument directly

from the insured depository institution in default will, in no event, be considered a negotiation of said instrument for purposes of this provision.

(2) **Deposit obligations for payment of items forwarded for collection by depository institution acting as agent**. Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

5. Section 330.6 – Single ownership accounts.

a. Individual accounts.

Funds owned by a natural person and deposited in one or more deposit accounts in his own name will be added together and insured up to the SMDIA in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney), the account will be treated as a joint ownership account (although not necessarily a qualifying joint account) and will be insured in accordance with the provisions of Sec. 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

b. Sole proprietorship accounts.

Funds owned by a business which is a sole proprietorship and deposited in a deposit account(s) in the name of the business will be treated as the individual account(s) of the sole proprietor, added to any other individual accounts of that person, and insured up to the SMDIA in the aggregate.

c. Single-name accounts containing community property funds.

Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community will be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to the SMDIA in the aggregate.

d. Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.

Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his estate and deposited into one or more deposit accounts will be added together and insured up to the SMDIA in the aggregate; provided, however, that nothing in this paragraph (d) will affect the operation of Sec. 330.3(j). The deposit insurance provided by this paragraph (d) will be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

6. Section 330.7 – Accounts held by an agent, nominee, guardian, custodian or conservator.

a. Agency or nominee accounts.

Funds owned by a principal(s) and deposited into a deposit account(s) in the name of an agent, custodian or nominee, will be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage will be governed by the provisions of Sec. 330.13.

b. Guardian, custodian or conservator accounts.

Funds held by a guardian, custodian, or conservator for the benefit of his ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into an account(s) in the name of the ward will, for purposes of this part, be deemed to be agency or nominee accounts and will be insured in accordance with section 330.7(a).

c. Accounts held by fiduciaries on behalf of two or more persons.

Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, will be treated as a joint ownership account and will be insured in accordance with the provisions of Sec. 330.9.

d. Mortgage servicing accounts.

Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, will be insured in accordance with section 330.7(a) for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums will be added together and insured in accordance with section 330.7(a) for the ownership interest of each mortgagor in such accounts.

7. Section 330.8 – Annuity contract accounts.

a. Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, will be insured separately in the amount of up to the SMDIA per annuitant, provided that, pursuant to a state statute:

i. The corporation establishes a separate account for such funds;

ii. The account cannot be charged with the liabilities arising out of any other business of the corporation; and

iii. The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

b. Such insurance coverage will be separate from the insurance provided for any other accounts the corporation or the annuitants maintain at the same insured depository institution.

8. Section 330.9 – Joint ownership accounts.

a. Separate insurance coverage.

Qualifying joint accounts, whether owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety, will be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. The interest of each individual in such qualifying joint account will be added together with any interests the individual has in any other joint accounts and insured up to the SMDIA. (Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his interest in the individual account. His interests in each separate capacity would be added to any interests held in like capacity in other accounts.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds will be added together and insured up to twice the SMDIA, separately from any funds deposited into accounts bearing their individual names. This ensures that the property held in qualifying joint accounts by married couples in community property states, such as Wisconsin, is given equal deposit insurance coverage as qualifying joint accounts held by married couples in other states.

b. Determination of insurance coverage.

The interests of each co-owner in all qualifying joint accounts will be added together and the total will be insured up to the SMDIA. (Example: "A&B" have a qualifying joint account with a balance of $60,000; "A&C" have a qualifying joint account with a balance of $80,000; and "A&B&C" have a qualifying joint account with a balance of $150,000. A's combined ownership interest in all qualifying joint accounts would be $120,000 ($30,000 plus $40,000 plus $50,000); therefore, A's interest would be insured in the amount of $100,000 and uninsured in the amount of $20,000.

c. Qualifying joint accounts.

i. A joint deposit account will be deemed to be a qualifying joint account, for purposes of this section, only if:

(1) All co-owners of the account funds are natural persons; and

(2) Each co-owner has personally signed a signature card; and

(3) Each co-owner possesses withdrawal rights on the same basis.

ii. The signature-card requirement of this section will not apply to CDs, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

iii. All deposit accounts that satisfy the criteria in section 330.9 (c)(1) or (c)(2), will be deemed to be jointly owned provided that, in accordance with the provisions of Sec. 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit

accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a CD or other deposit instrument will be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

d. Non-qualifying joint accounts.

A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, will be treated as being owned by each named owner, and each person's actual ownership interest will be added to any other single ownership accounts of such individual or other accounts of such entity.

e. Determination of interests.

The interests of the co-owners of qualifying joint accounts, held as tenants in common, will be deemed equal, unless otherwise stated in the depository institution's deposit account records, regardless of whether the terms "and" or "or" or both are used in the title of a joint deposit account such as in the case of a joint deposit account with three or more co-owners.

9. Section 330.10 – Revocable trust accounts.

a. General rule.

Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his death the funds will belong to one or more qualifying beneficiaries will be insured in the amount of up to the SMDIA in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term "qualifying beneficiaries" means the owner's spouse, children, grandchildren, parents, or siblings. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules of this provision, the account would be insured up to $400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.)

Such accounts are commonly referred to as tentative or "Totten trust" accounts, "payable-on-death" accounts, or revocable trust accounts.

b. Required intention.

The required intention in section 330.10(a) that upon the owner's death the funds will belong to a qualifying beneficiary(s) must be manifested in the title of the account using commonly accepted terms e.g. "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account will be presumed to own the funds deposited into the account.

c. Interests of non-qualifying beneficiaries.

If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary will be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to the SMDIA per owner. (Examples: If A establishes an account payable upon death to his nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to $200,000 corresponding to the two qualifying beneficiaries. The amount corresponding to the non-qualifying beneficiary (the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

d. Joint revocable trust accounts.

Where an account described in Section 330.10(a) is established by more than one owner and held for the benefit of others, some of whom are within the qualifying degree of kinship, the respective interests of each owner (which will be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary will be separately insured up to the SMDIA. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account will not be insured according to the provisions of this section but will instead be insured in accordance with the joint account provisions of Sec. 330.9.

e. Definition of ''children'', ''grandchildren'', ''parents'', ''brothers'' and ''sisters''.

For the purpose of establishing the qualifying degree of kinship, the term "children" includes biological, adopted and step-children. The term "grandchildren" includes biological, adopted and step-grandchildren. The term "parents" includes biological, adoptive and step-parents. The term "brothers" or "sisters" includes full-, half-, adopted and step-brothers or sisters.

f. Living trust accounts.

i. This section also applies to revocable trust accounts held in connection with a formal revocable trust created by an owner/grantor and over which the owner/grantor retains ownership during his lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the account held in connection with the living trust is eligible for the per-qualifying-beneficiary coverage described in section 330.10(a). This coverage will apply only if, at the time an insured depository institution fails, a qualifying beneficiary would be entitled to his interest in the trust assets upon the grantor's death and that ownership interest would not depend on the death of another trust beneficiary. If there is more than one grantor, then the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (f) will be irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the deposit account upon the account owner's death.

(Example 1: A is the owner of a living trust account with a deposit balance of $300,000. The trust provides that, upon A's death, her husband will receive $100,000 and each of their two children will receive $100,000, but only if the children graduate from college by age twenty-four. Assuming A has no other revocable trust accounts at the same depository institution, the coverage on her living trust account would be $300,000. The trust names three qualifying beneficiaries. Coverage would be provided up to $100,000 per qualifying beneficiary regardless of any contingencies.)

(Example 2: B is the owner of a living trust account with a deposit balance of $200,000. The trust provides that, upon B's death, his wife will receive $200,000 but, if the wife predeceases B, each of the two children will receive $100,000. Assuming B has no other revocable trust accounts at the same depository institution and his wife is alive at the time of the institution failure, the coverage on his living trust account would be $100,000. The trust names only one beneficiary (B's spouse) who would become the owner of the trust assets upon B's death. If when the institution fails B's wife has predeceased him, then the account would be insured to $200,000 because the two children would be entitled to the trust assets upon B's death.)

ii. The rules in 330.10(c) on the interest of non-qualifying beneficiaries apply to living trust accounts. (Example: C is the owner of a living trust account with a deposit balance of $200,000. The trust provides that upon C's death his son will receive $100,000 and his nephew will receive $100,000. The account would be insured for at least $100,000 because one qualifying beneficiary (C's son) would become the owner of trust interests upon C's death. Because the nephew is a non-qualifying beneficiary entitled to receive an interest in the trust upon C's death, that interest would be considered C's single-ownership funds and insured with any other single-ownership funds C might have at the same institution.

iii. For living trusts accounts that provide for a life-estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life-estate holder and each remainder-man will be deemed to have equal interests in the trust assets for deposit insurance purposes. Coverage will then be provided under the rules in this paragraph (f) up to the SMDIA per qualifying beneficiary.

(Example 1: D creates a living trust providing for his wife to have a life-estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are $300,000 and a living trust deposit account is opened for that full amount. Unless otherwise indicated in the trust, each beneficiary would be deemed to own an equal share of the $300,000. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.)

(Example 2: E creates a living trust providing for a life estate interest for her spouse and remainder interests for two nephews. The life estate holder is a qualifying beneficiary (E's spouse) but the remainder-men (E's nephews) are not. Assuming a deposit account balance of $300,000, the living trust account would be insured for at least $100,000 because there is one qualifying beneficiary (E's spouse). The $200,000 attributable to E's nephews would be insured as E's single-ownership funds.

iv. In order for a depositor to qualify for the living trust account coverage provided under this 330.9(f), the title of the account must reflect that the funds are held pursuant to a formal revocable trust. There is no requirement institution records indicate the beneficiaries or their interest.

v. This 330.9(f) will apply to all living trust accounts, unless, upon a depository institution failure, a depositor who established a living trust account before April 1, 2004, chooses coverage under the previous living trust account rules.

10. Section 330.11 – Accounts of a corporation, partnership or unincorporated association.

a. Corporate accounts.

i. The deposit accounts of a corporation engaged in any independent activity will be added together and insured up to the SMDIA in the aggregate. Any deposits of divisions or units which are not separately incorporated, will be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts will not be treated as the deposit accounts of the corporation but will be treated as fiduciary accounts and insured in accordance with the provisions of Sec. 330.7.

ii. Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the SEC pursuant to section 8 of the Investment Company Act of 1940 as a registered investment company will be deemed to be a corporation for purposes of determining deposit insurance coverage. Furthermore, any trust or other business arrangement that would be required to so register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act will also be deemed to be a corporation for purposes of determining deposit insurance coverage.[2] An exception to this paragraph

[2] Section 2(b) of the Investment Act of 1940 provides an exception for United States, State and Municipal government entities and corporations wholly owned directly or indirectly by such government entities. Section 3(c)(1) of that act exempts issuers of securities whose outstanding securities, other than short-term paper, are beneficially owned by no more than 100 people, and which is not making and does not presently propose to make a public offering of its securities.

will exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code. A deposit account of such a trust or business arrangement will not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships is disclosed in accordance with the requirements of Sec. 330.5. If these conditions are satisfied, each participant's funds will be insured as a deposit account of the participant.

b. Partnership accounts.

The deposit accounts of a partnership engaged in any independent activity will be added together. Such insurance coverage will be separate from any insurance provided for accounts maintained by the individual partners. Such partnership will be deemed to exist any time there is an association of two or more persons to carry on, as co-owners, an unincorporated business for profit.

c. Unincorporated association accounts.

The deposit accounts of an unincorporated association engaged in any independent activity will be added together, but separately from the accounts of the person(s) comprising the unincorporated association. Such unincorporated association will be deemed to exist whenever there is an association of two or more persons for some noncommercial purpose.

d. Non-qualifying entities.

The deposit accounts of an entity which is not engaged in an independent activity will be deemed to be owned by the person(s) owning the corporation or comprising the partnership or unincorporated association, and the interest of each person in such a

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Section 6(a)(1) of the Investment Company Act provides an exception for companies created under the laws of and having its principal office and place of business in Puerto Rico, the Virgin Islands, or any other United States possession – so long as no security of which such company is the issuer is offered for sale or sold by such company or its underwriter to a resident of any other U.S. State after November 1, 1940.

deposit account will be added to any other deposit accounts individually owned by that person and insured up to the SMDIA in the aggregate.

11. Section 330.12 – Accounts held by a depository institution as the trustee of an irrevocable trust.

a. Separate insurance coverage.

Trust funds held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, will be insured up to the SMDIA for each owner or beneficiary represented. This insurance will be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

b. Determination of interests.

The insurance for funds held by an institution as trustee of an irrevocable trust will be determined as follows:

i. **Allocated funds of a trust estate**. If trust funds of a particular trust estate are allocated by the fiduciary and deposited, the insurance with respect to such trust estate will be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

ii. **Interest of a trust estate in unallocated trust funds**. If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

c. Limitation on applicability.

This section will not apply to deposits of trust funds belonging to a trust which is classified as a corporation under Sec. 330.11(a)(2).

12. Section 330.13 – Irrevocable trust accounts.

a. General rule.

Funds representing the non-contingent trust interest(s) of a beneficiary deposited into one or more deposit accounts established pursuant to an irrevocable trust agreement(s) created by the same settlor(s) (grantor(s)) will be added together and insured up to the SMDIA in the aggregate. Such insurance coverage will be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each trust interest in any irrevocable trust established by two or more settlors will be deemed to be derived from each settlor pro rata to his contribution.

b. Treatment of contingent trust interests.

In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests will be added together. Such insurance coverage will be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to section 330.13(a).

c. Commingled accounts of bankruptcy trustees.

Whenever a Title 11 bankruptcy trustee commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together, separately from the funds of any other such estate.

13. Section 330.14 – Retirement and other employee benefit plan accounts.

a. ''Pass-through'' insurance.

Any deposits of an employee benefit plan in an insured depository institution will be insured on a "pass-through" basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in Sec. 330.5 are satisfied. Deposits eligible for coverage under paragraph (b)(2) of this section that also are deposits of a employee benefit plan or deposits of a deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 in an insured depository institution will be insured on a "pass-through" basis in the amount of $250,000 for the non-contingent interest of each plan participant, provided the rules in Sec. 330.5 are satisfied.

b. **Aggregation.**

i. **<u>Multiple plans</u>.** Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, deposited in a deposit account(s) will be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457, established by the same employer or employee organization.

ii. **<u>Certain retirement accounts</u>.** Deposits in an insured depository institution made in connection with the following types of retirement plans will be aggregated and insured in the amount of up to $250,000 per participant:

(1) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986:

(2) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(3) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

c. **Determination of interests.**

i. **<u>Defined contribution plans</u>.** The value of an employee's non-contingent interest in a defined contribution plan will be deemed to be the employee's account balance as of the date of default, regardless of whether any part of said amount was derived from contributions of the employee and/or the employer.

ii. **<u>Defined benefit plans</u>.** The value of an employee's non-contingent interest in a defined benefit plan will be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default.

iii. **<u>Amounts taken into account</u>.** For the purposes of applying the rule under paragraph (b)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or “457 Plan,” excluding any remainder interest, will be taken into account in determining the amount of insurance accorded to the plan’s deposits.

d. Treatment of contingent interests.

In the event that employees’ interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests will not exceed the SMDIA in the aggregate.

e. Overfunded pension plan deposits.

Any portion of an employee benefit plan’s deposits which is not attributable to the interests of the beneficiaries under the plan will be deemed attributable to the overfunded portion of the plan’s assets and will be aggregated and insured up to the SMDIA, separately from any other deposits.

f. Definitions of ‘‘depositor’’, ‘‘employee benefit plan’’, ‘‘employee organization’’ and ‘‘non-contingent interest’’.

Except as otherwise indicated in this section, for purposes of this section:

i. Depositor means the person(s) administering or managing an employee benefit plan.

ii. The term employee benefit plan has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

iii. The term employee organization means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists in part for the purpose of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees’ beneficiary association organized in part to establish such a plan.

iv. The term non-contingent interest means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in Sec. 20.2031-7 of the Federal Estate Tax Regulations or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

14. Emergency Economic Stabilization Act of 2008

a. SMDIA Increased to $250,000

i. Until December 31, 2009 the standard maximum deposit insurance amount is increased from $100,000 to $250,000. This coverage is in addition to and separate from coverage under the FDIC's general deposit insurance rules.

15. Temporary Liquidity Guarantee Program.

a. No SMDIA

i. Under the Temporary Liquidity Guaranty Program, until December 31, 2009 all funds in any non-interest bearing transaction accounts are fully guaranteed without regard to the SMDIA. This coverage is in addition to and separate from coverage under the FDIC's general deposit insurance rules.

ii. **Sweep Programs.** Funds in a non-interest bearing transaction account may be swept into interest bearing accounts, but unless they are in a non-interest bearing savings or transaction account at the end of the sweep they will not be guaranteed by the transaction account guarantee program. If any accounts affected by such sweep arrangements would result in the funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, the institution must inform in writing the affected customers.

b. Institution Opt-Out

i. Institutions may opt out of the temporary liquidity guarantee program.

ii. The FDIC publishes on its website the institutions that have opted-out of the program.

iii. Institutions that offer non-interest bearing transaction accounts must display in simple readily understandable text in their lobby, and on their website if they offer internet deposit services, whether it is participating in the temporary liquidity guarantee program, and if it is, that such deposits are guaranteed in full by the FDIC.

c. Record Keeping Requirement

i. The FDIC will establish procedures, require reports, and require participating entities provide and preserve any information needed for the operation of the temporary liquidity guarantee program.

ii. Participating entities are subject to the FDIC's oversight regarding compliance with the terms of the temporary liquidity guarantee program.

d. Enforcement mechanisms

i. **Termination of Participation.** The FDIC has discretion, after consulting with a participating entity's Federal banking agency, to determine that the participating entity will no longer be permitted to continue to participate in the temporary liquidity guarantee program. The FDIC will so notify the entity of the decision. The termination of participation in the program will only have prospective effect.

ii. **Enforcement Actions.** Any violations of the temporary liquidity guarantee program can result in civil money penalties, removal and prohibition orders, and cease and desist orders, and in the case of institutions, violations may result in the termination of the institution's deposit insurance.

e. Payment on the Guarantee

i. In general the FDIC will pay guaranteed claims of depositors for funds in a noninterest bearing transaction account as soon as possible upon the failure of the entity, and in accordance with 12 U.S.C. 1821(f) and 12 CFR 330, 370, unless otherwise provided in this paragraph (370.12(a)).

ii. **Subrogation.** Upon payment of claims, the FDIC will be subrogated to the claims of depositors in accordance with 12 U.S.C. 1821(g).

iii. **Review of Final Determination.** The final determination of the amount guaranteed will be considered a final agency action of the FDIC reviewable in accordance with Chapter 7 of Title 5, by the U.S. District Court for the federal district where the principal place of business of the depository institution is located. Any request for review of the final determination will be filed with the appropriate district court not later than sixty (60) days of the date on which the final determination is issued.

SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES

SIPC In A Nutshell

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The Role of SIPC

- SIPC is the first line of defense in the event a brokerage firm fails owing customers cash and securities that are missing from customer accounts. From its creation by Congress in 1970 through December 2007, SIPC advanced $508 million in order to make possible the recovery of $15.7 billion in assets for an estimated 625,000 investors.

- When a brokerage is closed due to bankruptcy or other financial difficulties and customer assets are missing, SIPC steps in as quickly as possible and, within certain limits, works to return customers' cash, stock and other securities. However, not everyone, and not every loss, is protected by SIPC.

What SIPC Covers and What It Does Not

- SIPC is not the FDIC. The Securities Investor Protection Corporation does not offer to investors the same blanket protection that the Federal Deposit Insurance Corporation provides to bank depositors.

- When a member bank fails, the FDIC insures all depositors at that institution against loss up to a certain dollar limit. The FDIC's no-questions-asked approach makes sense because the banking world is "risk averse." Most savers put their money in FDIC-insured bank accounts because they can't afford to lose their money.

- That is precisely the opposite of how investors behave in the stock market, in which rewards are only possible with risk. Most market losses are a normal part of the ups and downs of the risk-oriented world of investing. That is why SIPC does not bail out investors when the value of their stocks, bonds and other investments falls for any reason. Instead, SIPC replaces missing stocks and other securities where it is possible to do so ... even when the investments have increased in value. SIPC does not cover individuals who are sold worthless stocks and other securities. SIPC helps individuals whose money, stocks and other securities are stolen by a broker or put at risk when a brokerage fails for other reasons.

OPERATIONAL ISSUES

- When a brokerage firm fails owing customers cash and securities that are missing from customer accounts, SIPC usually asks a federal court to appoint a trustee to liquidate the firm and protect its customers. With smaller brokerage firm failures, SIPC sometimes deals directly with customers.

- The cash and securities – such as stocks and bonds – held by a customer at a financially troubled brokerage firm are protected by SIPC. Among the investments that are ineligible for SIPC protection are commodity futures contracts and currency, as well investment contracts (such as limited partnerships) that are not registered with the U.S. Securities and Exchange Commission under the Securities Act of 1933.

- Customers of a failed brokerage firm get back all securities (such as stocks and bonds) that already are registered in their name or are in the process of being registered. After this first step, the firm's remaining customer assets are then divided on a pro rata basis with funds shared in proportion to the size of claims. If sufficient funds are not available in the firm's customer accounts to satisfy claims within these limits, the reserve funds of SIPC are used to supplement the distribution, up to a ceiling of $500,000 per customer, including a maximum of $100,000 for cash claims.

- Typically, when SIPC asks a court to put a troubled brokerage firm in liquidation, the financial worth of a customer's account is calculated as of the "filing date." Wherever possible, the actual stocks and other securities owned by a customer are returned to him or her. To accomplish this, SIPC's reserve funds will be used, if necessary, to purchase replacement securities (such as stocks) in the open market.

- Most customers with cash and securities missing from customer accounts are eligible for SIPC assistance. However, SIPC's funds may not be used to pay claims of any failed brokerage firm customer who also is:

    - A general partner, officer, or director of the firm.

    - The beneficial owner of five percent or more of any class of equity security of the firm (other than certain nonconvertible preferred stocks).

  - A limited partner with a participation of five percent or more in the net assets or net profits of the firm.
  - Someone with the power to exercise a controlling influence over the management or policies of the firm.
  - A broker or dealer or bank acting for itself rather than for its own customer or customers.

- Treatment of Multiple Accounts
  - Individual accounts. All individual accounts must be aggregated.
  - Joint accounts. Joint accounts are generally deemed separated from individual accounts.
  - UGMA accounts. The custodian does not aggregate these accounts with individual accounts in his or her name.
  - Trust accounts. Treated separately.
  - Entity Accounts. Treated separately
  - Introduced Accounts. Accounts with different introducing brokers are not aggregated.

- Most customers can expect to receive their property in one to three months. When the records of the brokerage firm are accurate, deliveries of some securities and cash to customers may begin shortly after the trustee receives the completed claim forms from customers, or even earlier if the trustee can transfer customer accounts to another broker-dealer. Delays of several months usually arise when the failed brokerage firm's records are not accurate. It also is not uncommon for delays to take place when the troubled brokerage firm or its principals were involved in fraud.

- In a failed brokerage firm with accurate records, the court-appointed trustee and SIPC will generally arrange to have some or all customer accounts transferred to another brokerage firm. Customers whose accounts are transferred are notified promptly and then have the option of staying at the new firm or moving to another brokerage of their choosing.

FOLEY EXECUTIVE BRIEFING SERIES

SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES: SAFEGUARDING ASSETS AND EVALUATING ADVISORS

AS A TRUST BENEFICIARY, HOW CAN YOU PROTECT YOUR BENEFICIAL INTERESTS IN THE TRUST?

Presented by:
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I. Understanding Your Beneficial Interest.

A. Trust. A trust is a legal arrangement where one person (the "donor") transfers property to another person (the "trustee") to hold and administer the property as a fiduciary for the benefit of one or more other persons (the "beneficiaries"). A donor may create a trust under a trust agreement effective during the donor's lifetime, or under the donor's last will and testament effective at the donor's death.

B. Beneficial Interest. Each beneficiary's interest in the trust is defined by the terms of the Donor's trust agreement or will, supplemented where necessary by the law. Beneficial interests are usually classified in terms of being current or future interests, income or principal interests, and mandatory or discretionary interests.

1. Current or Future Interest.

a. Current Interest. A current interest means that the beneficiary is currently entitled or at least eligible to receive distributions from the trust. A current interest may terminate on a certain date or the occurrence of a certain event in the future, e.g., the beneficiary attaining a certain age, the beneficiary's death, or the beneficiary's remarriage.

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b. Future Interest. A future interest means that the beneficiary must wait until a certain date or the occurrence of a certain event in the future to become entitled or at least eligible to receive distributions from the trust. A future beneficiary is sometimes called a remainderman. Most future interests are contingent on the remainderman surviving the current beneficiary.

2. Income or Principal Interest.

a. Income Interest. An income interest means that the beneficiary is or will in the future be entitled or at least eligible to receive some or all of the net income of the trust. Traditionally, net income consists of interest, dividends, short-term capital gain distributions and rents, less administration expenses and taxes allocable to income. Alternatively, net income can be calculated in terms of a unitrust amount, i.e., a fixed percentage of the value of the trust re-determined periodically. Wis. Stat. 701.20.

b. Principal Interest. A principal interest means that the beneficiary is or will in the future be entitled or at least eligible to receive some or all of the principal of the trust.

3. Mandatory or Discretionary Interest.

a. Mandatory Interest. A mandatory interest means that the beneficiary is or will in the future be entitled to receive a distribution of income or principal from the trust. For example, in the case of a marital deduction trust where the donor's surviving spouse must receive all of the net income of the trust, the surviving spouse has a current mandatory income interest.

b. Discretionary Interest. A discretionary interest means that the beneficiary is or will in the future be eligible to receive a distribution of income or principal from the trust, but whether or not the beneficiary actually receives a distribution will depend on the exercise of trustee discretion. For example, in the case of a credit shelter family trust where the trustee has discretion to distribute the net income of the trust among the donor's surviving spouse, children and grandchildren, or accumulate the net income in the trust, the surviving spouse, children and grandchildren have current discretionary income interests.

i. <u>Primary Beneficiary</u>. Where there is a class of current permissible beneficiaries, it is not uncommon for the donor to identify one of the beneficiaries as the primary beneficiary. Such a designation usually has the effect of causing the trustee to give first consideration to the needs and circumstances of the primary beneficiary when exercising the trustee's discretion.

ii. <u>Distribution Standard</u>. As an alternative to giving complete discretion to the trustee, the donor may limit distributions to a standard relating to the beneficiary's health, education or support, or some other standard.

4. <u>Beneficial Powers</u>. In addition, a donor may grant certain powers to a beneficiary including the power to withdraw a fixed amount of principal from the trust each year, the power to appoint the remaining assets of the trust among a group of potential beneficiaries upon the termination of the trust, and the power to remove and/or replace the trustee.

C. <u>Purposes of the Trust</u>. A trust can serve a variety of purposes. It is important for a beneficiary to know, understand and accept the reasons why the donor established the trust instead of giving the property outright to the beneficiary.

1. <u>Save Estate Taxes</u>. A donor will often transfer property equal to his or her federal estate tax exemption to a family trust for the lifetime benefit of his or her surviving spouse in order to shelter such property from federal estate tax at the surviving spouse's subsequent death. Similarly, a donor can transfer property to generation-skipping trusts for his or her children to avoid estate taxes at the children's deaths.

2. Control Disposition at Beneficiary's Death. With a trust, the donor can control who receives the property following the current beneficiary's death. For example, in a second marriage situation, the donor may want to provide financially for the second spouse for the rest of the second spouse's lifetime, but upon the second spouse's death, direct the remaining assets to the donor's children from his or her first marriage.

3. Ensure Professional Management of the Property. Trusts are often established to ensure that the property will be professionally managed, sometimes only until the current beneficiary attains a certain age, or sometimes for the current beneficiary's entire life.

4. Provide Additional Income to the Current Generation But Preserve Principal for the Next Generation. In setting up trusts for his or her children, the donor's goal may be to provide his or her children with additional income to make their lives easier without taking away their incentive to be productive, and to preserve the principal for his or her grandchildren.

5. Supplement Public Benefits Available to a Disabled Child. The parent of a disabled child may want to establish a special needs trust for his or her child to supplement but not replace any public benefits which such child may be eligible to receive.

6. Protect Property from Potential Claims. A common reason for creating a trust is to insulate the property from potential claims against the beneficiary, including claims brought by the beneficiary's spouse in a divorce action, and thereby provide the beneficiary with a financial safety net.

II. Safety of Trust Assets From Creditor Claims.

A. <u>Donor's Creditors</u>. In general, absent fraud on the part of the donor, where the donor is not a beneficiary, the creditors of the donor may not recover property from the trust.

B. <u>Trustee's Creditors</u>. Trust property is not available for satisfying the personal obligations of the trustee. Moreover, the insolvency or bankruptcy of the trustee does not affect the property of the trust. Restatement (Third) of Trusts § 41, cmt. c (2007).

C. <u>Your Creditors and Other Beneficiaries' Creditors</u>. Most trusts contain spendthrift provisions which prohibit a beneficiary from assigning or otherwise transferring his or her interest in the trust, and prevent the beneficiary's creditors from seizing the interest. The creditors must wait until income or principal is actually paid or becomes payable to the beneficiary before they can seek recovery from such property. Wis. Stat. 701.06(1) and (2). Meanwhile, the trustee may be able to make payments for the benefit of the beneficiary and/or make distributions to members of the beneficiary's family.

- ❖ Spendthrift provisions are less effective in protecting the trust property from claims made against the beneficiary for child support or public support. Wis. Stat. 701.06(4) and (5).

III. Beneficiary Vigilance.

A. <u>Review Trust Accountings</u>. A trustee has a fiduciary duty to segregate and account for the property in the trust. Restatement (Third) of Trusts §§ 82-84 (2007). Ideally, trust accountings should reflect the income and principal balances of the trust at the beginning of the period; report all receipts and disbursements of income and principal during the period, with similar receipts and disbursements grouped together; show the income and principal balances of the trust at the end of the period; and list the assets on hand at the end of the period, showing both their book values and their fair market values.

A current beneficiary should request the trustee to provide the beneficiary with regular trust accountings if the trustee is not doing so already. Here are some questions that the beneficiary should have in mind as he or she is reviewing a trust accounting.

1. How is the trust's net income being calculated, i.e., in the traditional manner or as a unitrust amount?

2. If the net income is being calculated in the traditional manner, how are administration expenses and taxes being allocated between income and principal?

3. Who is receiving the net income of the trust? Have there been any distributions of principal? If so, to whom and did they satisfy the applicable distribution standard (if any)? Does the trust accounting accurately reflect all of the distributions that the beneficiary received?

4. What assets were purchased and sold during the period? How does the fair market value of the assets at the end of the period compare with the fair market value of the assets at the beginning of the period?

5. What was the asset allocation at the end of the period? Does it provide the trust with adequate diversification?

B. <u>Compare Trust Accountings with Other Trust Statements and Documents</u>. A current beneficiary can request other trust statements and documents from the trustee, and compare them with the trust accountings for consistency. These include:

1. fiduciary income tax returns;

2. investment policy statement;

3. if there is a separate investment advisor, any reports or materials prepared by the investment advisor;

4. confirmations for purchases and sales prepared by the broker executing the trades; and

5. if there is a separate custodian, any statements prepared by the custodian including 1099 forms.

C. <u>Maintain Regular Contact with the Trustee</u>.

1. Apprise the trustee of your financial situation (including your other financial resources and income, employment status, and financial obligations), and update the trustee as changes occur.

2. Apprise the trustee of your personal and family situation (including your age, marital status and health), and update the trustee as changes occur.

3. Discuss with the trustee your tolerance for risk.

4. Discuss with the trustee the investment performance of the trust and whether the trustee anticipates any upcoming changes in the portfolio or the investment advisor.

5. Discuss with the trustee the custody of the trust assets.

6. Discuss with the trustee the plan for appointing a successor trustee or trust officer when the current trustee or trust officer ceases to serve.

D. <u>Introduce Yourself to Other Individuals Who Work on the Administration of the Trust</u>. It is a good idea to get to know other individuals who work on the administration of the trust, including trust officers, attorneys, accountants, investment advisors, and their assistants, and visit their offices.

SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES

EMPLOYEE BENEFITS: SURVIVING EMPLOYER'S BANKRUPTCY

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I. The Employment Retirement Income Security Act of 1974, as amended (ERISA) Governs Most Employee Benefits, Including:

A. Retirement plans, such as pension plans, cash balance pension plans, profit sharing plans, 401(k) plans, and most 403(b) plans.

B. Welfare benefit plans, such as group health plans, together with certain rights to continuation of coverage following termination of employment or reduction of hours worked under the section of ERISA created by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

C. The assets of ERISA-governed retirement plans must be held in either a trust account or an insurance contract and are separate from all assets of the employer, as required by ERISA, and will not be included as an asset of the employer in the bankrupt estate.

D. ERISA's regulations do not protect account balances in defined contribution accounts from the ravages of a stock market downturn.

E. ERISA-governed group health plans do not have plan assets. Either they are provided by insurance or are paid for out of the employer's assets (self-funded).

F. ERISA generally does not regulate governmental or church plans.

II. Chapter 7 or Chapter 11 Bankruptcy of the Employer.

A. Under Chapter 7, the employer is required to turn over all non-exempt assets to a bankruptcy trustee. The trustee liquidates, or sells the assets and

distributes the sale proceeds to the creditors of the employer. Creditors are ranked and paid off in order of their priority, to the extent assets are available. The employer then ceases to exist.

B. Under Chapter 11, the employer continues to operate under the protection of the bankruptcy court. Employer debts are reorganized, the employer establishes a plan of repayment, and the creditors are paid off, to the extent provided for in the plan, in a specified period of time pursuant to the terms of the plan. The plan may provide for payment of less than the full amount due and owing.

III. Employee Benefits under Chapter 7 Bankruptcy (Liquidation).

A. Under Chapter 7, where the employer is liquidated, the employer's retirement plans typically terminate. For defined contribution plans (profit sharing and 401(k) plans) this usually means distribution of account balances to participants. For defined benefit plans, it usually means that the Pension Benefit Guaranty Corporation (PBGC) takes over the plan assets and the payment of benefits.

B. If the bankrupt employer maintains a defined benefit plan with sufficient assets to pay all benefits, the plan may be terminated without PBGC involvement.

C. Under Chapter 7, group health plans will also terminate or otherwise cease to exist. If the bankrupt employer maintains no group health plan (and no group health plan is maintained by a member of its controlled group), then COBRA is not available to former employees of the bankrupt employer.

IV. Employee Benefits under Chapter 11 Bankruptcy (Reorganization).

A. Under Chapter 11, retirement plans and group health plans typically continue in effect after the bankruptcy process begins, to the extent business operations continue, although adjustments to the plans may be made based on the financial situation.

B. Defined benefit plans that cannot be sufficiently funded by the employer in Chapter 11 reorganization may be terminated and the assets and liabilities taken over by the PBGC.

C. If 401(k) contributions or Roth 401(k) contributions are withheld from an employee's pay by an employer in Chapter 11, the employee should confirm that the amount withheld has, in fact, been forwarded to the plan trustee or insurance contract.

D. Group health plans may be adjusted, including the termination of some or all of them. So long as one of the employer's group health plans (or a group health plan of a controlled group member) continues in effect, employees who lose coverage because of terminations of employment or reductions in hours will be eligible to elect COBRA continuation, as will covered dependents who experience a COBRA qualifying event, such as divorce or loss of dependent status.

V. Employee Group Health Benefits under Bankruptcy (Both Chapter 7 and Chapter 11).

A. Access to health insurance at group rates is of great economic value to participants.

B. If the group health plan was insured, there may be an opportunity to convert from group coverage to individual conversion coverage. The cost of individual health insurance coverage is typically far higher than similar coverage obtained through group coverage.

C. If the bankrupt employer offers retiree health coverage, then covered retirees' rights to continue coverage must be analyzed under COBRA's special rule for retirees.

1. Bankruptcy triggers COBRA rights and is a qualifying event for covered retirees and their covered beneficiaries if it causes loss of coverage.

2. Loss of coverage in relation to bankruptcy includes "a substantial elimination of coverage within one year before or after the commencement of the bankruptcy proceeding." There is great uncertainty as to what this means.

3. Loss of coverage due to bankruptcy extends the COBRA coverage continuation period: (a) to life for the covered participant; and (b) for the covered spouse and children, to the first to occur of the qualified beneficiary's death or the date that is 36 months after the death of the covered participant.

4. COBRA coverage resulting from bankruptcy cannot be terminated if the qualified beneficiary becomes entitled to Medicare after electing COBRA (exception to the usual rule).

5. COBRA continuation coverage is only meaningful if the bankrupt employer or any member of its controlled group continue to sponsor a group health plan.

D. The Bankruptcy Code restricts termination of retiree health plans in Chapter 11 bankruptcies, as follows:

1. Retiree health plans existing pre-filing cannot reduce or eliminate benefit payments (a) without permission of the court, or (b) until after the reorganization plan is completed.

2. A court will not approve reduction or termination of retiree health benefits unless it is established that the changes are necessary for the reorganization and are fair in comparison to the impact of the proceedings on other parties.

E. But there has to be a group health plan in effect for the COBRA rights to be meaningful, and the COBRA premiums must still be paid.

VI. Pension Benefit Guaranty Corporation (PBGC) Insures Pension Benefits.

A. Benefits provided by defined benefit pension plans (including traditional pension plans and cash balance plans) are protected by the PBGC, a federal government corporation. If a defined benefit plan is terminated because an employer has financial difficulty and cannot fund the plan, and the plan does not have enough money to pay the promised benefits, the PBGC will assume responsibility for the plan's assets and liabilities. The PBGC pays benefits after plan termination up to a certain maximum guaranteed amount. Defined contribution plans (such as 401(k) plans) are not insured by the PBGC.

B. Persons retiring early and highly compensated individuals may find that some of their pension amount exceeds PBGC's guarantee. PBGC guarantees basic benefits including certain early retirement, disability, and survivor benefits. Benefits that are not guaranteed include health and welfare benefits, severance benefits, lump-sum death benefits, and disability benefits when death or disability occurs after plan termination.

C. For single-employer pension plans, the guarantee limit is adjusted annually based on changes in the Social Security contribution and benefit base, and is permanently established for each plan on the day the plan terminates (except where plan termination occurs during the employer's bankruptcy or in the case of certain airline industry plans). For 2009, the maximum guarantee amounts are as follows:

Single life annuity payable at age 65	$54,000 yearly ($4,500 per month)
Single life annuity payable at age 62	$42,660 yearly $3,555 per month)
Single life annuity payable at age 55	$24,300 yearly ($2,025 per month)

D. Benefit increases and new plan benefits are only partially covered by PBGC's guarantee if they have been in the plan less than five years on the date of plan termination.

VII. Nonqualified Deferred Compensation and Bankruptcy.

A. In order for nonqualified deferred compensation arrangements to remain exempt from most ERISA requirements, the arrangements may be provided only to members of a select group of management or highly compensated employees (top-hat group). A plan that covers only a top-hat group is called a top-hat plan. Top-hat plans are not subject to ERISA except for a simplified reporting requirement and certain enforcement rules.

B. Top-hat plans are typically used to provide supplemental employee retirement plan (SERP) benefits and voluntary (elective) deferred compensation benefits to an employer's high level employees presumed by the law to be able to look out for their own interests without needing ERISA protections.

C. A participant in a top-hat plan stands in the shoes of an unsecured general creditor of the employer if the employer becomes bankrupt. This status is required by the Internal Revenue Code as a condition for deferral of taxation until the compensation is paid to the participant.

D. A top-hat plan cannot be funded by a trust fund or insurance contract that is not part of the employer's assets (formal funding). Informal funding is allowed. When funding is formalized and assets are set apart from employer assets such that they are no longer subject to the claims of creditors, then top-hat plan participants are immediately taxed on their vested interest in that plan.

E. A top-hat plan may be maintained on a book-entry basis without informal funding. Or, it may be maintained with informal funding, such as with assets segregated into separate funding vehicles (e.g., life insurance policies owned by the employer) or assets set aside by the employer in an irrevocable grantor trust (sometimes called a "rabbi trust"). The segregated assets and the assets held in a rabbi trust must, however, remain at all times the assets of the employer and subject to the claims of the employer's creditors.

F. A rabbi trust offers *zero* protection from creditors in the event of the employer's bankruptcy.

G. Top-hat plan benefits (SERP benefits) are highly vulnerable when an employer faces insolvency or bankruptcy. They will be paid at the same rate as are the debts of general unsecured creditors which may be cents on the dollar.

H. Enactment of Internal Revenue Code Section 409A has made it extremely unlikely that top-hat plan benefits may be cashed out to the participant ahead of an impending insolvency or bankruptcy of the employer. Some flexibility to accelerate cashouts may be available for benefit amounts earned and vested under a top-hat plan in effect before January 1, 2005.

I. Any cash out of top-hat plan benefits proximate to the bankruptcy filing may be a voidable transfer under bankruptcy rules.

J. A SERP planning alternative may be available to transfer some or all unfunded SERP benefit liability to the employer's tax-qualified defined benefit pension plan. The technique is referred to as creating a QSERP and it continues to be viable under the final regulations under Internal Revenue Code Section 409A. SERP benefit liabilities may be transferred from a nonqualified deferred compensation plan to become part of the accrued benefit of the affected participant in a tax-qualified pension plan (thus creating the QSERP benefit in the pension plan) so long as the pension plan continues to satisfy applicable nondiscrimination testing rules under Internal Revenue Code Section 401(a)(4) after the QSERP is created. Creating QSERPs is done only at the corporate and plan level, and cannot be unilaterally done by individual participants.

VIII. Action Steps when Employer Insolvency Is a Concern.

A. Know your retirement, group health, and top-hat plans.

B. Keep current summary pan descriptions and benefit statements on hand.

C. Determine whether your employer is a member of a controlled group of companies and whether all, or only some, members of the group are facing insolvency.

D. Compare your projected pension benefit to the maximum PBGC guaranteed amount. http://www.pbgc.gov

E. Watch for timely transfer of wage deductions to your 401(k) or Roth 401(k) plan account.

F. Determine the form and time at which SERP benefits and other top-hat plan benefits are payable.

G. Is any acceleration of top-hat plan benefit payments available for any portion of plan benefits (most likely the portion grandfathered under Internal Revenue Code Section 409A)?

H. May any top-hat plan benefits be transferred into a tax-qualified pension plan by creating a QSERP?

I. Upon termination of employment, pay close attention to COBRA rights and make timely elections to preserve them.

J. Upon termination of employment, consider prompt rollover to IRA of defined contribution plan accounts, away from plan sponsored by the troubled employer.

SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES

AVOIDING INVESTMENT TRAPS

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I. Be aware of the classic frauds

   A. Nigeria

   B. Prime bank loans

   C. Ponzi schemes

   D. Any arrangement which requires an upfront payment to cover "expenses"

II. Diversify

   A. Assets

   B. Asset classes

   C. Asset managers

III. Beware of high pressure marketing

   A. Exclusivity

   B. Urgency

   C. The latest hot deal promoted by someone who profits from it

   D. Other investment fads

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E. Don't assume that someone is honest just because they share the same religion or other affiliation you do

IV. Don't invest in anything you don't understand

A. If necessary, get independent advice

V. If it looks to good to be true, it probably is (or, "there is no such thing as a free lunch")

A. High guaranteed returns

B. No losses, or guarantees against loss

C. Returns which are very consistent, regardless of changes in the markets

VI. Look for the involvement of independent (and responsible) third parties

A. Accountants

B. Custody of assets

C. Reporting of investment results

FOLEY EXECUTIVE BRIEFING SERIES

SECURING PERSONAL INVESTMENTS DURING UNCERTAIN TIMES

GUIDELINES FOR INVESTMENT ADVISOR SELECTIONS AND A DUE DILIGENCE CHECKLIST FOR PRIVATE INVESTORS

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A) Base Your Due-Diligence on the Services You Require.

Low Fee, Low Service Brokerage
- ✓ *Commission based services*
- ✓ *Investment discretion retained by client*
- ✓ *Little to no advice*
- ✓ *Order flow centric*

Traditional Brokerage: Low Fee, Low Service with...
- ✓ *More advice*
- ✓ *Investment discretion retained by client or shared*
- ✓ *Service may be provided by an individual or a team of brokers*

Discretionary Brokerage Account: Traditional Brokerage where...
- ✓ *Broker makes buy and sell decisions*
- ✓ *Commission or fee based*
- ✓ *Also known as the "single advisor" account*

Manager of Managers #1
- ✓ *Client retains the discretion to hire and fire managers*
- ✓ *Advisor recommends managers*
- ✓ *Advisor may or may not directly manage assets*
- ✓ *Typically fee based, but commissions may be additional*

Manager of Managers #2

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- ✓ *Client and advisor either a) share discretion over hiring and firing of managers*
- ✓ *Or b) advisor retains full discretion*
- ✓ *Typically fee based, but commissions may be additional*

<u>Hedge Funds</u>

- ✓ *A widely used, catch-all phrase, for non-traditional investments*
- ✓ *Often characterized by a lack of transparency and the use of leverage*
- ✓ *Generally with fee structures known as "2 & 20", for example the fees are 2% annually on assets plus 20% of the account's annual appreciation*

B) Guidelines and Practical Due-Diligence for Private Investors

<u>Regulatory</u>

1) Stock brokers and brokerage firms register with Financial Industry Regulatory Authority (FINRA). FINRA administers the "Series 7" exam that licenses stock brokers in the U.S.

- ✓ *You may use FINRA BrokerCheck to conduct high-level research on your broker and his or her firm.*
- ✓ *Internet search for "FINRA BrokerCheck" and enter the broker's name to review the broker's FINRA qualifications, registration, securities industry employment history and a disclosure of customer disputes, disciplinary and regulatory events.*
- ✓ *Enter the brokerage firm's name, to review similar corporate information.*
- ✓ *These reviews may generate questions about your broker or his or her firm.*

2) Investment advisory firms register under the Investment Company Act of 1940.

- ✓ *Internet search for "SEC Advisor Search," enter the firm's name on the SEC site, and review the firm's most recent SEC or state investment advisor registration.*

3) Consider asking your broker or advisor if his or her firm, any officer or principal of the firm has ever been involved in any business litigation, regulatory legal proceedings or government investigation involving allegations of fraud, negligence, criminal activity, or breach of fiduciary duties.

- ✓ *If so, ask for a written description of the event(s), including an explanation, and the current status.*
- ✓ *Firms with a history of client arbitration events or that are mired in a protracted suit may be distracted from their money management and client servicing responsibilities.*

Conflicts of Interest

4) Generally, ask how your broker or advisor and his or her firm avoid client conflicts of interest.

- ✓ *Your advisor should be able to articulate a well developed conflict avoidance statement.*

5) Ask your broker or advisor to agree to annually disclose to you all potential conflicts of interest, including revenue based conflict sources.

- ✓ *This information will help you understand the level of independence of your broker or advisory firm.*
- ✓ *Your goal with this request is to understand how to insulate yourself from conflicts (especially those related to compensation issues).*
- ✓ *Responses indicating a conflict of interest should be explored further. Pay particular attention to investment product related compensation, such as:*
    - *mutual fund 12-B1 fees and shareholder servicing fees,*
    - *front and end-load commissions,*
    - *retail commission schedules vs. discount broker rates vs. institutional rates, and*
    - *market value based fees (does the fee schedule include cash balances?)*

Experience

6) Request a description of the firm's history, ownership structure, revenue and staff structure by headcount, including an org-chart.

- ✓ *Particularly useful for a high-level evaluation of the viability of broker dealer or advisory firms.*
- ✓ *For closely held firms, with a small ownership group, ask about succession plans. Is a plan in place today and is it easy to understand and implement?*

7) For an advisory firm, request a copy of their mission statement, ask about their primary business focus and all sources of firm income (with percentages).

- ✓ *Become aware of a firm's business mission, focus and income sources in order to understand the institutional perspective through which your account may be managed.*

- ✓ *For example, institutions and investment professional managing traditional defined-benefit pension plans, including Taft-Hartley plans, may be less sensitive to the affects of taxes on personal (taxable) investment accounts.*

8) For a broker, ask about his or her experience advising clients with needs that match your own (personal investors, managing family trusts, etc.). Ask about the different types of investment products he or she deploys for clients.

- ✓ *Answers to these questions will help match your investment needs and preferences with your broker's expertise.*
- ✓ *For example, if you want to own hedge funds, choose a broker or a firm specialized in hedge funds.*
- ✓ *Hedge funds, annuities, individual stocks and bonds, mutual funds, ADRs, exchange traded funds, CDOs, etc. all have advantages and disadvantages for the individual investors' consideration.*

9) Ask your broker or advisor about the relative size of their other clients' accounts.

- ✓ *Selecting a broker or advisor with a client base resembling your portfolio and goals will help you access asset allocation strategies and investment products appropriate to your situation.*
- ✓ *If you hold responsibility for a $25 million trust, it may be inappropriate for you to work with a broker accustom to managing $750,000 individual retirement accounts.*

Track Record

10) Ask for and then contact three (3) client references for which your broker or advisor has provided similar services.

- ✓ *Your goal is to validate that your service-expectations can be reasonably met by your broker or advisor.*
- ✓ *Ask the references to describe the services they received and their general level of satisfaction.*
- ✓ *Compare their response to your expectations.*

11) For both advisors and brokers alike, request the number of clients they have today, and the number of clients added and lost over the past two years.

- ✓ *Steady, sustained net growth is typically a very good sign.*

- ✓ *Large percentage swings in clients won or lost indicates the need to proceed with caution.*
- ✓ *A sudden influx of new clients may be disruptive to future service or performance.*
- ✓ *A high percentage of departing clients may indicate past service, performance or other circumstances worth avoiding.*

12) Particularly for advisory firms, request a list of all senior-level hires and departures over the last three years.

- ✓ *Generally but not always, a stable senior staff is indicative of organizational stability.*
- ✓ *Frequent occurrences of new or departing senior-staff may indicate the need to proceed with caution.*
- ✓ *Hiring can signal growth, which if steady and sustainable, is positive. Are these new hires or replacements? If growth related, why is it sustainable?*
- ✓ *For departing staff, follow-up with a discussion of who left, and why?*

<u>Compensation Issues</u>

13) Ask your broker or advisor to provide a written description of proposed services and all associated fees.

- ✓ *This information may be found in several marketing brochures or documents.*
- ✓ *It becomes much easier to understand in summary form.*

14) Ask for an indication of any future services and related charges.

- ✓ *Are you being offered an attractive service today, that will result in a higher-priced services later, such as insurance, credit-cards, banking, residential mortgage, etc.?*
- ✓ *Understand why the future services are not needed today.*

15) If hired, ask your advisor to agree to annually disclose if he or she, or his or her firm, receives any other form of compensation from working with your account that has not already been revealed.

16) Request a list of incentives provided by your broker's firm, or your advisor's firm to attract and retain superior professionals.

- ✓ *In a mobile society, what keeps your broker or advisor tied to his or her firm?*
- ✓ *Are the incentives tied to specific products or services, or based purely on gross production?*

17) For Manager of Managers and Wrap programs, ask your broker or advisor to provide a list of all money management firms from which your broker, advisor or his or her firm, its principles or any affiliates receive any compensation.

- ✓ *Your goal is to understand as much about the program's inter-related compensation structures as possible.*
- ✓ *Do money managers pay to be added the program, or is inclusion based only on the manager's investment performance?*
- ✓ *In Manager of Manager programs is trade "order-flow" exclusively directed to your broker or advisor, or are the investment managers allowed to trade where they want to?*
- ✓ *For "Unified Manager" programs (also known as Overlay Manager programs), where multiple outside managers trade in a single account through a Unified Manager, ask about a delay between the outside managers' trading and the Unified Manager's trading. Is it possible for the outside manager to front-run the Unified Manager by trading a day or more before the Unified Manager? (Also, although not a compensation related, note that when high-turnover managers participate in a Unified Manager programs there exists the potential for long-term tracking error due to trading delays. How does the program address this potential? When markets are volatile, as they have been recently, a one day trading delay on every trade applied over several weeks or months may significantly impact your portfolio.)*

<u>Fiduciary Considerations</u>

18) If you are a fiduciary you are subject to special rules regarding investments. These rules are found in the entity's governing documents or under Wisconsin law, including Chapter 881 for trusts, estates, guardianships and conservatorships and Section 112.10 for charitable endowment funds. These rules impose limits or requirements not applicable to individual or other institutional investors.

- ✓ *Confirm that your broker or investment advisor understands these differing legal standards and can advise you on how to comply with them.*
- ✓ *Chapter 881 allows trustees, personal representatives, guardians and conservators to delegate investment responsibility to an investment advisor so that the investment advisor rather than the fiduciary is liable to the beneficiaries.*
- ✓ *Will your broker or investment advisor agree to this?*
- ✓ *Despite when many brokers or investment advisors may say, virtually every contract with a broker or investment advisor provides exactly the opposite result.*

Advanced Topics for Considerations

19) Ask your advisor to describe how your account's assets will be administered. Ask about the authority your advisor will have over the administration of your account.

- ✓ *Your goal is to understand the transparency of the investment process; including trading, custody, client reporting, disbursement processing, etc.*
- ✓ *Do separate entities control pieces of the asset administration process, or are all aspects of asset administration and reporting handled by one organization?*
- ✓ *Who has to approve disbursement requests?*
- ✓ *When your advisor uses an outside custodian, will you receive a separate report directly from the custodian? Is there an additional fee for the custodian's services?*
- ✓ *How is trading managed? Are trades executed through the same broker every time? Is the commission schedule competitive? Does order-flow generate any compensation or research credits?*

20) Ask your investment advisor to describe his or her method for allocating your assets.

- ✓ *According to most studies, over 90% of an investment portfolio's return is directly attributed to asset allocation (rather than when a particular stock or bond is bought or sold).*
- ✓ *Does your advisor record (for future review) and carefully consider your personal situation before making asset allocation recommendations?*
- ✓ *Listen for clues about how the process is personalized, and how often it is repeated.*
- ✓ *Asset allocations need updating as personal financial situations evolve.*
- ✓ *Your advisor should revisit this topic at least annually, to consider any significant personal or life changing events.*

21) Ask for your advisor's views on passive versus active investment strategies. This question often revels more about you than it does your advisor. Note that many of us find both of these strategies attractive for the reasons listed below.

- ✓ *It may be helpful to understand your advisor's perspective on these strategies and how their perspective might be reflected in your portfolio.*
- ✓ *Generally, certain investors are willing to pay higher fees for the best investment managers available. These investors want very talented managers to generate out-sized, or above market, investment returns by making individual buy and sell decisions based on any number of quantities and qualitative characteristics.*

- ✓ *Others investors are perfectly happy accepting "market" returns. They exchange the ability to pick and choose individual investments for a lower fee schedule.*
- ✓ *Passive and active investment strategies center around three concepts: "alpha" return or an investment manager's performance in relations to an index's performance, the effect of management fees, both high and low, on investment return and the capital markets' efficiency for a particular asset class. These three concepts come together to define the strategies.*
- ✓ *Passive investment strategies focuses on investing in a particular asset class, or market, through index funds or index securities. A good example of an asset class or market are domestic large-cap equities. Rather than hiring a manager to make individual buy and sell decisions, passive investors purchase a fund representing the asset class. These strategies are popular because of their relatively low fee structures. They are also attractive when investors perceive that an asset class is highly efficient, making it difficult for active managers to consistently add positive alpha (create investment return above the performance of the index) on an after-fees basis.*
- ✓ *Active investment strategies focus on investing with active investment managers making individual buy and sell decisions. Generally, active managers seek to add positive alpha (investment return above the performance of the index) on an after-fees basis, in exchange for a higher fee structure. These strategies are popular for asset classes that are believed to be relatively less-efficient when compare to the market as a whole.*

22) Another investment strategy which may or may not be applicable in your portfolio is alternative investment products. Ask your advisor to explain his or her view of the use of alternative investments and any special expertise they have in this area.

- ✓ *Alternative investments, such as hedge funds, private equity, master limited partnerships, etc., have become very popular in recent years.*
- ✓ *Understand why these investment products are a good fit for your portfolio before moving forward.*
- ✓ *Be aware that alternative investments, such as hedge funds, often have a "2 and 20" fee schedule, where they charge a 2% fee on assets under management plus 20% of the investment's annual return.*
- ✓ *Alternative investments, including hedge funds, may also have unusual terms or restrictions that you should be aware of before investing. Consider "lock-up" clauses, where the investor agrees to limit redemptions to a predetermined schedule, say quarterly or annually, and may further agree to give the fund manager significant advanced notification of redemption requests. These lock-up clauses may further allow the fund manager to deny redemption requests.*

23) In a Manager of Managers program, ask for your advisor's guidelines for removing a money manager from the program.

- ✓ *The criteria, or guidelines, will give you an indication of your provider's reliance on methodology and experience.*
- ✓ *For example, do they implore a watch-list strategy, where underperforming managers are put on notice before being replaced?*
- ✓ *Is there a hard benchmark by which they measure manager performance?*
- ✓ *What other criteria result in the termination of a manager? Fraud? Key person resignation?*
- ✓ *Ask how often or how many managers have been terminated.*

24) Ask your advisor to describe his or her firm's ability to provide performance measurement information.

- ✓ *Investment performance can often take several forms. You need to understand what is provided in order to determine its value.*
- ✓ *Performance results calculated using your actual assets and transactions, rather than results from a composite account or results published by a mutual fund company are your best source of information.*
- ✓ *Results net of fees are more meaningful than results before fees, unless you are lucky enough not to pay fees! See active verses passive management above.*
- ✓ *For mutual funds, performance results provided by fund companies are appropriate for fund to fund comparisons, but may not actually represent your performance results. Here is why. Fund companies makes certain assumptions when calculating performance returns. For example, fund companies typically assume their dividends and capital gains distributions are reinvested into new shares. You may alternatively withdrawal distributions as they occur, or choose to accumulate the distributions in your account's money market fund or reinvest the distributions in a different fund or funds.*
- ✓ *The performance of your mutual fund portfolio is dependent on how the funds are allocated in your portfolio, how you treat dividends (reinvested or taken as cash), capital gain distributions (reinvested or not), the shareholder class owned (different share holder classes have different fee structures), when you invested or sold (timing), and any commissions, loads, program or advisor fees you may pay.*