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Trust UPDATE

Citizens Bank
A Bank Built For You

February 2023

"Though trusts have been around since the Middle Ages, they have recently experienced a surge of innovation and popularity, as wealthy people pursue ever stronger ways to avoid publicity and taxes."

—Evan Osnos, "The Getty Family's Trust Issues," The New Yorker, *January 23, 2023*

A peek behind the curtain

The financial affairs of the wealthiest American families are often handled by "family offices," staffed by teams of attorneys, accountants, investment and tax specialists. These are intensely private arrangements. The general public rarely gets a glimpse of how the family offices are operated, unless a disagreement escalates into a public court fight. That is exactly what has happened to one branch of the Getty family. Their story was reviewed by Evan Osnos in the January 23, 2023, issue of *The New Yorker*, "The Getty Family's Trust Issues."

J. Paul Getty was the richest American in 1957, according to *Fortune* magazine at that time. His money came from oil, in particular from operations in Saudi Arabia and Kuwait. Getty was a notorious skinflint. When one of his grandchildren was kidnapped and held for ransom in Italy, Getty refused to pay. "I have 14 other grandchildren," he reportedly said. "If I pay one penny now, I'll have 14 kidnapped grandchildren." Eventually, Getty did pay $2.2 million of the ransom.

When Getty died, after a tax bill of a billion dollars was paid, his fortune was divided among four factions of the family, about $750 million each. One faction was headed by a son, Gordon Getty. Gordon was married and had four sons of his own. He also had three daughters out of wedlock, in an extramarital affair. In 1999 the girls' mother went to court to have them recognized as Gordon's children. He did not contest the issue, but readily acknowledged paternity, saying "I love them very much."

Gordon established a trust, named Pleiades, to give the daughters a share of the Getty wealth. It will continue to grow until his death, when the women gain full control of it. The projected value is $1 billion.

The investment advisor

After a stint working for a nonprofit, Marlena Sonn became interested in finance. While working as a receptionist for a small firm in Manhattan, she studied at night to become a financial planner. After her certification, Marlena found a niche in helping the wealthy align their investments with their values.

Through a business contact, Marlena met Kendalle Getty, one of Gordon's daughters. The two hit it off, their politics and interests aligned. Kendalle first entrusted $1 million to Marlena to manage, and soon after transferred the rest of her $5 million nest egg. She also introduced her sister, Sarah, to Marlena, who began working for both sisters.

One of Marlena's tasks was to provide advice with regard to the trust investments. The trust was located in Nevada, and to avoid California taxes, all the trust management decisions happened at family meetings outside of California. In addition, Marlena

Continued on next page

carefully tracked how many days each of the sisters spent in California, to document the fact that they were not California residents.

Unfortunately, during the pandemic the sisters sharply curtailed their travel, spending more than half of their time in California. Marlena raised a red flag, warning that the tax strategy they were following seemed no longer tenable.

For that warning, Marlena was fired. Initially, the sisters agreed to a generous severance package, but they reneged after consultations with other advisors. A lawsuit was filed, alleging that Marlena had breached her fiduciary duties to the sisters, deceiving them into accepting the multimillion-dollar severance. Marlena sued for the severance payment she had been promised. The lawsuits led to the publicity that resulted in *The New Yorker* article.

We don't know the end of the story yet.

An alternative to a family office

According to *The Wall Street Journal*, a family office operation costs $1 million annually or more. Accordingly, until family wealth exceeds $100 million (probably by a lot), a less costly alternative is likely appropriate.

One vital alternative to consider for wealth management of smaller fortunes is a trust company or the trust department of a bank. Such organizations are corporate fiduciaries. That means that they are business organizations permitted, under the law, to serve as trustee and administer investment programs for individuals, families, businesses and endowments. They provide personalized financial services, but for many clients, instead of just one family. For this service, they are compensated by reasonable annual fees tied to the market value of the funds in their care. Their operations are subject to a variety of internal and external regulatory oversight. These businesses also cost over $1 million per year to operate, but that cost is spread among many more clients.

We would be pleased to tell you more about how our trust and investment services may benefit you and your family. Why not call today to arrange an appointment to review your needs and requirements? ☐

A menu of services

One of the great strengths of trust planning is the ability to tailor the plan to respond flexibly to current and future family financial needs. We emphasize personalized financial management.

Portfolio supervision

Our investment advisory and investment management services put experienced investment professionals on your side. The officer assigned to your account will work with you to establish an investment strategy suited to your personal goals and circumstances.

Lifetime financial management

The next step in comprehensive financial protection employs a revocable living trust. We begin by developing an investment policy for the trust, based upon your requirements. We will implement that plan, providing continuous portfolio supervision, reinvesting or distributing trust income as directed. As trustee, we can move beyond the investment sphere, arranging to pay household bills and taxes on your behalf. A revocable trust provides financial protection in the event of incapacity, and has valuable estate planning aspects as well.

Charitable trusts

Thoughtfully designed trusts can provide financial protection for you or for family members as well as substantial support for your favored charity. Significant tax benefits may be available as well.

IRA rollovers

People who receive lump sums from company retirement plans can choose to pay income tax immediately or execute a tax-deferred rollover. With their tax-deferred nature, IRA rollovers present somewhat unusual investment issues, which need to be addressed in the context of a full review of financial resources.

Estate settlement

Whether your estate will be large or small, you should not put this task into inexperienced hands. Your will can designate us to handle this critical responsibility. By doing so, you assure your family that your estate will be settled efficiently, economically and fairly.

Marital and family trusts

When a legacy for a spouse, child or other family member is left in trust, the heir receives a double benefit—our professional investment management, supervision, in addition to the financial resources represented by the trust assets. With careful management, the flexible protection afforded by the trust can last a lifetime.

The ESG investing controversy

In the 1990s, the idea of "socially responsible investing" took shape. The initial idea was to use negative screening to avoid companies that traded in "sin" or "vice," such as tobacco companies, gun manufacturers, casinos, and liquor companies. Some people added oil companies to the forbidden category.

Although screening out disfavored firms may have made investors feel virtuous, it didn't affect the fortunes of those firms in a material way. In fact, the "vice stocks" generally outperformed the market as a whole, because those companies tended to be rather profitable, paying generous dividends to their shareholders.

A less constricting version of socially responsible investing has emerged in recent years, one that employs positive screens or themes as well as exclusions. Three categories of factors are involved: environmental, social, and governance (ESG). An environmental focus may look at carbon emissions, water stress, renewable energy, or pollution. Social factors might be diversity, inclusion, labor, employee welfare, or data security. Governance issues might touch upon independent directors, audit standards, women in leadership, and executive compensation.

Companies may be scored for their ESG performance. They may self-report, or data may be gathered by third parties who then sell the data. These scores may be combined with traditional financial analysis tools in determining which companies are likely to have the desired impact while still providing strong returns to shareholders.

ESG and retirement plans

There is no shortage of opportunities to invest in mutual funds that have ESG aspects to them. However, such funds were not yet widely available in the nation's 401(k) plans, nor were pension funds investing in them. The Department of Labor in the Trump Administration proposed a ruling that could have slowed the addition of such funds to retirement plans. Under that DOL rule, fiduciaries had to justify offering any particular mutual fund, including ESG funds, based only upon pecuniary factors, not social ones. Additionally, the early DOL rule prohibited making any ESG fund the default option for plan participants, which would require them to opt out instead of opting in.

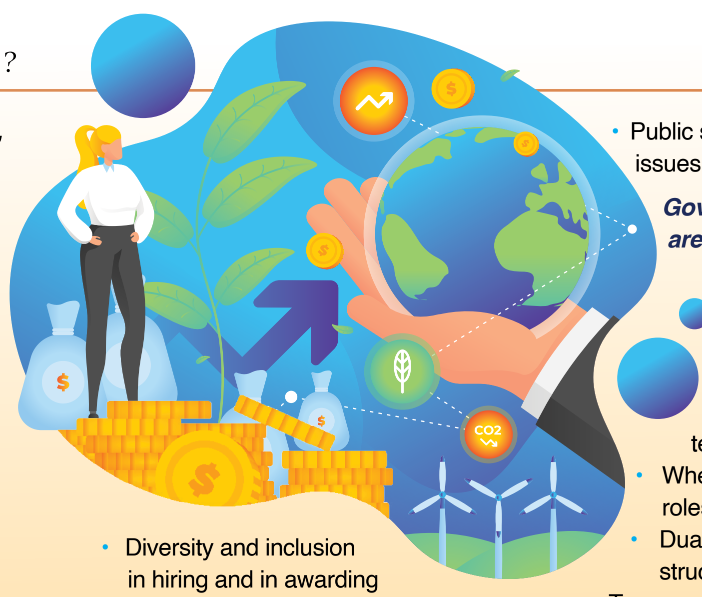
The Biden Administration reversed course, and in final rules that took effect on February 1 has given the green light to allow retirement plans to take ESG factors into consideration in making investment choices. However, the duty of loyalty to plan participants remains.

ESG investing has become controversial, as some believe that it has become a means to inject political factors into investment decisions, as well as a mechanism for bringing political pressure to bear on company management. ESG can serve as a cover for the demands made by institutional investors. This perception of a political agenda hardened when, in the name of "climate change," ESG proponents argued against investments in oil and gas companies. Several states have explicitly disavowed ESG investing and removed their pension funds from firms that promote that strategy.

Now a coalition of 24 states and additional plaintiffs have filed a lawsuit to prevent the new DOL rule from taking effect. They argue that the new ESG rule violates ERISA standards, that the normal procedural rules were not followed in its adoption, and that specific harms will follow its adoption. In addition, legislation to nullify the new rule has been introduced in Congress.

The outcome of these efforts remains unclear. ☐

What is ESG investing?



"ESG" stands for Environment, Social, and Governance.

Concerns about the environment include:

- Climate change policies, plans, and disclosures.
- Greenhouse gas emissions goals.
- Carbon footprint and carbon intensity.
- Water-related issues and goals, such as usage, conservation, overfishing, and waste disposal.
- Green products, technologies, and infrastructure.

Social concerns may include:

- Employee treatment, pay, benefits, and perks.
- Employee safety policies including sexual harassment prevention.
- Diversity and inclusion in hiring and in awarding advancement opportunities and raises.
- Ethical supply chain sourcing, such as conflict-free minerals and responsibly sourced food and coffee.
- Public stance on social justice issues, as well as lobbying efforts.

Governance covers such areas as:

- Whether executives are entitled to golden parachutes (huge bonuses upon exit).
- Diversity of the board of directors and management team.
- Whether chairman and CEO roles are separate.
- Dual- or multiple-class stock structures.
- Transparency in communicating with shareholders, and history of lawsuits brought by shareholders.

Big Roth changes

The budget legislation that Congress passed just before Christmas included a slew of tweaks to the rules for retirement plans, collected together in SECURE Act 2.0. In particular, there were important enhancements for the Roth accounts that are allowed in company retirement plans. One reason that Congress favors Roth accounts is that they are funded with after-tax money, which gets scored as a revenue increase when the Congressional Budget Office forecasts the impact of legislative changes. In the long run, Roth accounts will have negative effects on revenue, as most distributions will be tax-free. However, the "long run" is outside the 10-year window used to evaluate budget impacts.

Matching funds. Until now, when an employee deferred money into a Roth 401(k) account, the employer match would go into a regular tax-deferred account—pre-tax money, in other words. Starting this year, the employer match may instead go into the Roth account. If that happens, the employee will have to pay income tax on the employer match.

No RMDs. Unlike the traditional IRA, there are no Required Minimum Distributions (RMDs) from a Roth IRA. Not so for the Roth accounts in 401(k)s, for which RMDs are still mandated. That changes in 2024, when the RMDs will be dropped for all Roth accounts.

Roth SIMPLEs and SEPs. For smaller employers, SIMPLE and SEP retirement plans have been a relatively easy and inexpensive approach to having a company retirement benefit. These plans are now allowed to offer the Roth account option as well.

Catch-up contributions. Taxpayers who are 50 and older are allowed larger "catch-up" contributions to their retirement plans. Starting in 2024, those who have higher incomes will be required to make catch-up contributions in Roth accounts instead of tax-deferred accounts.

529 plan rollovers to Roth IRAs. It's not certain how many 529 plan accounts end up overfunded, with money left over after the beneficiary is finished with education. In that happy circumstance, beginning in 2024, those funds may be rolled into a Roth IRA for the beneficiary. However, restrictions apply. The 529 account must have been in place for at least 15 years; the annual rollover cannot exceed the Roth IRA contribution limit, and the total lifetime rollovers cannot exceed $35,000.

Warren Buffett said . . .

The Stock Market is designed to transfer money from the Active to the Patient.

It's good to learn from your mistakes. It's better to learn from other people's mistakes.

The difference between successful people and really successful people is that really successful people say no to almost everything.