APPENDIX I

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PRUDENT INVESTMENT BY TRUSTEES

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APPENDIX I

HISTORY OF THE LEGAL LIST[1, 2]

The legal list approach to regulation of trustee investment was developed by the Court of Chancery in the latter part of the 18th century and was codified by the British Parliament in the mid 19th century. This development came about as a result of the burst of the "South Sea Bubble" in the mid 18th century. Prior to this event there were no restrictions on trustee investments and as commerce boomed through the early part of the 18th century trustees invested in risky, though profitable enterprises. The burst of the South Sea Bubble was similar in effect to the stock market crash of 1929, resulting in the loss of vast sums of money and left many trust beneficiaries destitute.

This event, and other financial disasters, persuaded the Court of Chancery to restrict trustees and declare that investment in commercial enterprises was tantamount to speculation and that no trustee had the right to speculate with another person's money. Instead, declared the Court, the duty of the trustee was to place the funds in a stable and well secured investment. With the emergence of government stocks, loans to the government secured by the government with its revenues, an investment became available which provided income while securing the trust funds.

These were the instruments in which Chancery invested moneys under its own control on behalf of beneficiaries. And appeals to the Court for advice resulted in the commendation of the same practice to trustees. As a result trustees who were held liable for losses were told that had they followed the Court's lead the losses would not have occurred or, if there had been loss, they would not have been held liable for a lack of due and proper care.[3]

With the growth of industry and commerce in the 19th century there came to be a desire for a broader range of trustee investment other than government

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[1] This memorandum was prepared with the able assistance of Don Masson, an Alberta Law Reform Institute Research Student now articling with the Court of Appeal of Alberta.

[2] Much of the following historical background is from D.W.M. Waters, *Law of Trusts in Canada*, 2d ed. (Toronto: Carswell, 1984) 766-775.

[3] *Supra* note 2 at 767.

stocks. In 1859 the British Government, responding to pressure from trustees to be allowed more breadth of investment, enacted the *Trustee's Relief Act*[4] and the statutory legal list was born. While initially permitted investment was limited to Bank of England and Ireland, and East India stocks, the list was expanded throughout the 19th century to include shares in railway companies, public utilities, and other safe investments.[5]

In Canada, the English model was followed, and Canadian jurisdictions either adopted the English law or enacted legislation of their own based on the English model. For a number of decades the Canadian lists followed the Imperial Statute and made changes as the Imperial Parliament did.[6] Although the list was changed and expanded, the underlying character of the list did not. The list remained a safe and reliable way to preserve the capital of the trust while providing an income adequate for the beneficiaries.

At the time of the inception of the legal list there was no inflation in England and a return of 3% on investment was sufficient to provide an adequate income for the trust's beneficiaries. However with two world wars, a catastrophic depression, high inflation rates, and other economic factors, the twentieth century does not have the same economic conditions which made the legal list viable in an earlier time. Despite these changes the legal list remained largely unchanged resulting in more and more testators and settlors, particularly in the post world war II era, preferring to give their trustees complete investment discretion making the legal lists irrelevant.

Sensing a change in the wind, the Uniformity Commissioners began in 1951 to re-evaluate the legal list. In 1957 the Uniformity Commissioners adopted a model legal list which provided trustees with more options for investment, including the ability to invest in preferred stocks but not common stocks. Though a number of provinces did revise their lists, many including both preferred and common stock, by the mid 1960s the 1957 model act had failed to receive the level of Provincial

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[4] 1859 (U.K.) 22 & 23 Vict., c. 35, s. 32.

[5] *Supra* note 1 at 768.

[6] Manitoba Law Reform Commission, *Report on Investment Provisions Under "The Trustee Act": Report #50* (Winnipeg: 1982) at 3.

acceptance hoped for and the Uniformity Commissioners again returned to the problem of trustee investment.

The difference between the efforts in the 1950s and those in the 1960s was that rather than attempting to revise the legal lists, the commissioners created a "prudent person rule" following the lead of the United States where, by the mid 1960s, well over half of the American jurisdictions had abandoned the legal list and adopted a prudent person rule.[7] The model Act was adopted in 1970 and was first enacted by New Brunswick in 1971.[8] In the same year the Northwest Territories also adopted the new model Act,[9] followed by the Yukon Territory in 1980,[10] and Manitoba in 1983.[11] To date no other Canadian jurisdiction has adopted the prudent person rule, though almost all American jurisdictions have now done so.[12]

PROBLEMS WITH THE LEGAL LIST

A trustee has several goals to pursue when trust funds are invested. First the trustee must ensure the security of the capital and preserve the fund for its intended purposes. As a result speculation is not appropriate unless the testator or settlor has specifically sanctioned it. Secondly the trustee is, usually, expected to invest the funds so as to provide a continuing source of income for the beneficiary, or to accumulate for a specific purpose such as funding the education

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[7] *Ibid* at 5.

[8] S.N.B. 1971, c. 73, s. 2 (now R.S.N.B. 1973, c. T-15, s. 2).

[9] O.N.W.T. 1971, c. 20 (now R.O.N.W.T. 1974, c. T-8, s. 3).

[10] O.Y.T. 1980, c. 33, s. 1(1) (now C.O.Y.T. 1976, c. T-6, as amended, ss. 3,4).

[11] S.M. 1982-83, c. 38, s. 5. (now C.C.S.M. c. T160 s. 68).

[12] John H. Martin, "The Preface to the Prudent Investor Rule" (November, 1993), *Trusts and Estates* 42 at 42. Prudent Investor rules in Ontario are limited to substitute decision makers.

of the beneficiary.[13] The trustee's goal is to strike a balance between these two objectives and to maximize return on investment while minimizing risk to the trust capital. The legal list successfully accomplishes the latter objective, but fails to accomplish the former.

This problem was identified in 1966 by the Uniformity Commissioners who criticized the legal list approach for putting too much emphasis on the preservation of the funds under administration to the detriment of the equally important objective of providing income. As L.P. Pigeon Q.C. (as he then was) and J.W. Durnford stated:

> The result is a restricted list of permissible investments...of which the principal characteristic is "safety" in the sense that such investments are not supposed to be likely to depreciate as to their face values.
>
> Such a substitution of the state's view of what is a prudent investment for that of the individual trustee through the enactment of a legal list does not, however, result in the preservation of the real value of the funds. Indeed the latter is certain to decline with the passage of time because of a number of factors.[14]

The fundamental problem with the legal list model of trustee investment control is that a list is incapable of keeping up with the changing investment needs of a modern economy. To change the list to meet these needs requires legislative amendment and, as the Manitoba Law Reform Commission noted in its 1981 report, *Instrument Provisions Under the "Trustees Act"* at 6 "[o]ften the legislature has more pressing problems to deal with."

At one time the legal list was capable of accomplishing the two objectives. In the late 19th and early 20th century when there was no inflation, investments authorized by the legal list might yield a 3% return and provide a generous living

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[13] Law Reform Commission of Saskatchewan, *Consultation Paper on the Law of Trust #2: The Investment Powers of Trustees* (Saskatoon: College of Law, University of Saskatchewan, March 1995) at 3.

[14] Louis-Philippe Pigeon, Q.C. and J.W. Durnford, "Trustee Investments" *Proceedings of the Forty-Eighth Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada,* 1966, 106 at 106. (The primary factor identified by the Quebec Commissioners was inflation).

allowance for the beneficiaries. This is not the situation today. The Manitoba Law Reform Commission noted in 1981 that:

> investors who wish to strike a fair balance between preservation of capital and suitable income must be flexible, sophisticated and aggressive. It must also be remembered that the market place is dynamic. This being the case, trust management is an active enterprise. As the market changes, the trustee ought to be able to change the investment strategy of the trust and to do this requires flexibility.[15]

At present the legal list does not allow for the level of flexibility required by trustees to be able to strike that important balance between generating income and preserving the trust capital.

A further problem with the legal list approach has been identified by the Manitoba Law Reform Commission. The list, it is argued, may encourage uninformed trustees to believe that their responsibility to invest prudently has been discharged by investing in accordance to the legal list. However, a trustee who places trust funds in long term interest-bearing securities of a sort that meet the requirements of a province's list may be doing the beneficiary a disservice in a period of high inflation.[16] The Manitoba Commission found that trustees may still be liable for mismanaging trust funds even if they have complied with the list in every transaction conducted. As the Commission stated:

> An incompetent trustee is an incompetent trustee and remains so regardless of what legislation prevails in his jurisdiction. The original purpose of the legal list was to protect the beneficiaries of the trust, not the incompetent trustee.[17]

REFORM ACTIVITIES

In determining how best to approach the issue of reforming trustee

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[15] *Supra* note 6 at 7.

[16] *Supra* note 13 at 12.

[17] *Supra* note 6 at 10.

investments several options present themselves. These options can be divided into two broad categories: A) Legal List Reform; and B) Prudent Investor Rule.

A. Legal List Reform

By retaining the legal list it is possible to satisfy those who feel that the legal list provides the guidance needed by trustees in order to ensure that the trustee invests trust funds in a safe manner in order to preserve the capital. While working within the boundaries of the legal list there are several methods of reforming the list:

1. Update the Legal List:

Update the legal list to reflect the investment strategies of the 1990 and to allow trustees to take advantage of those strategies.

2. Amend the Legal List:

The legal list could be amended to allow for broader investment by trustees, and the trustee legislation revised to put the list in regulations and thus allow for amendment by order in council rather than legislation.

3. Saskatchewan Modification/*The Trustee Investment Act*:

Based on the English *Trustee Investment Act* , the Saskatchewan Law Reform Commission has suggested modifying the legal list to allow for a portion of the trust funds to be invested in a broad range of investments with the remainder of the funds to be invested in safe, traditional list investments.

B. Prudent Investor Rule

1. Uniformity Commissioners Model Act:

Adopted in 1970 by the Conference of Commissioners on Uniformity of Legislation in Canada, this model act was adopted by New Brunswick and the Northwest Territories in the early 1970s and provided the foundation for the Yukon Territory's and Manitoba's Prudent Investor Acts.

2. National Conference of Commissioners On Uniform State Laws:

Adopted in 1994 by the American N.C.C.U.S.L., this is an updated version of the American prudent person rule; for the first time, it incorporates the portfolio theory of trustee investment. The incorporation of this theory marks a quantum improvement in the rules and is a major reason for review of the ULC Model Act.

REFORM OPTIONS

A. Legal List Reforms

1. Update the List

This reform option may best be described as the option not to reform. Instead it would require an analysis of modern investment needs in order to create a legal list which accurately reflects today's investor's needs. This was the approach taken by the Uniformity Commissioners throughout the 1950s, and met with little success.

Ultimately this option can never be more than a stopgap measure. By its nature the process of bringing the list into line with today's economic reality leads to an outdated list tomorrow. This process would have to be an ongoing one constantly trying to keep up with the rapid changes in a modern global economy.

2. Amending the Legal List

This reform would simply update and expand the legal list to provide leeway for trustees to be able to invest in a broader number of investments. By doing this, and by allowing changes to the list by orders in council, rather than having to amend the legislation itself, it may be possible to build in sufficient flexibility to overcome the limitations of the legal list approach.

Like the first this option does not address the underlying problems with the legal list. Even if the list were to be very broadly worded it would remain a static document incapable of responding to rapid changes, and while allowing the list to be amended through orders in council may result in more prompt adjustments to

the list it would still be impossible for legislators to anticipate all of the changes needed. In addition, one of the problems identified by the Manitoba Law Reform Commission remains; governments will often have more pressing concerns than updating the list in a timely manner, even by means of regulation. The lag exists, aside from the philosophical question of whether such a "paternal" attitude is justifiable.

3. The Saskatchewan Modified List

In a recent consultation paper the Law Reform Commission of Saskatchewan has advocated following the English lead in regard to trustee investment with some modification.[18] Under this approach the concept of the legal list is retained. However, the list is divided into two categories: a narrow investment category and a wide investment category. Under the *English Trustee Investment Act, 1961*[19] a trustee subject to the *Act* can invest up to 50% of trust funds in "Wide Range Investments", which includes investments considered too speculative under the old legal list regime, including common shares of companies with proven ability to pay dividends. The balance of the trust funds would remain invested in "Narrow Range Investments" which are similar to those found in the old legal list.

The Saskatchewan Law Reform Commission advocates following the general principle of the English Approach with some modifications. Under their proposal there would be no restriction on the percentage of trust funds which may be invested in Wide Range securities. However, a trustee would be prevented from investing in these types of investments without first obtaining the written advice of a recognized financial advisor. In this way it is felt that a trustee may be given the flexibility required in today's investment climate, while retaining the security provided by the legal list.[20]

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[18] *Supra* note 13.

[19] 9&10 Eliz. 2, c. 62.

[20] *Supra* note 13 at 24. The following is the recommendation of the Law Reform Commission of Saskatchewan.

While the Saskatchewan proposal at first glance appears to be a departure from the list approach, a closer look reveals that it is still subject to the limitations of the legal list. The Wide Range investments, though offering more flexibility to a trustee, still limit the trustee to investments approved by regulation. In doing so the criticisms regarding the static nature of the list and the lag between the need for modification to the list and legislative action are still applicable to the Saskatchewan proposal.

4. The Legal List and the Problem of Exclusions

One of the factors cited by the Saskatchewan Law Reform Commission for requiring a change to the legal list is the high number of trustees who do not come under any statutory control in regards to their trust fund investment decisions. Professor Waters estimates that over 90% of professionally drawn trusts contain an express power of investment in which trustees are given a free hand to invest as they see fit.[21] This strikingly high number of trusts containing

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1. Investments approved for trustees governed by *The Trustee Act* should consist of two classes:

(a) Government (municipal, provincial, federal, and selected foreign securities) now included in the list of approved investments under the *Trustee Act*; first mortgages and securities secured by first mortgages or trust indenture; Insured Deposits in financial institutions; Securities guaranteed by governments.

(b) All other publicly-traded securities and securities approved by Regulation.

2. Trustees should be directed to invest funds, having regard to the nature and purposes of the trust, to maintain an appropriate balance between income and capital, and to meet the needs of the trust for security and growth.

3. A trustee should not be permitted to invest in class (b) securities without obtaining advice, in writing, of a recognised financial advisor. This recommendation should apply to trustees who are permitted to make investments not included in the approved list, and to trustees who have been given discretionary investment powers.

4. A trustee should not be permitted to apply to the court for permission to make an investment that is not otherwise approved.

[21] *Supra* note 2 at 775.

an express power of investment is likely the result of general dissatisfaction with the legal list.[22] As a result there are a great number of trustees who do not fall under statutory control, but who are instead left to invest as per the provisions of the trust instrument, and do so under an uncertain, and poorly defined standard of care.

This high level of opting out creates problems. For example a trustee with an express investment power may face a burden of proof problem and have to show that he or she had the power to invest in a subsequently disputed manner. As such the trustee must be certain that the intention of the settlor is clearly recorded. Even where the settlor's language is apparently clear the settlor's intent may not be. Professor Waters illustrates this with an example of a trust instrument in which the settlor stated that the funds "are to be invested at the discretion of my trustee." By stating this, is the settlor merely reiterating the law that among the permitted investments contained in the legal list the trustees have the discretion as to which investments the funds will be put in, or is he authorizing the trustee to invest outside the boundaries of the legal list?[23] Other problems can also arise out of an express power of investment, such as defining "investment" and determining when it is the trustee's duty *not* to follow the investment directions of the settlor .

To get around this problem the Saskatchewan Law Reform Commission has recommended that all trustees be subject to the requirement that, before investing in a "Wide Range" investment, they seek the advice, in writing, of a recognized financial advisor. This section would apply to all trustees including those who are permitted to make investments not included in the approved list and those who are given discretionary investment powers.[24] In this way all trustees will have some check on their actions, as well as having some protection should an investment go awry. However in achieving this safeguard the Saskatchewan recommendation appears to come dangerously close to removing the power of

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[22] *Supra* note 13 at 4.

[23] *Supra* note 2 at 776. For an in-depth discussion on the problems of express powers of investments see Waters 775-780.

[24] *Supra* note 13 at 24. The required qualifications for a "financial advisor" vary widely from province to province.

settlors to create a trust as they see fit. If a settlor has chosen a particular trustee on the strength of that person's investment acumen why should the settlor's choice be hindered by the requirement that the trustee seek advice from a recognized financial advisor? Or perhaps due to the sensitivity of a particular investment the trustee is unable or unwilling to have an investment "vetted" by such an expert. One can certainly imagine numerous situations where having to seek advice could seriously hinder a trustee's ability to perform his or her duties, to the detriment of the beneficiaries.

B. Prudent Investor Rule

The Prudent Investor Rule was pioneered by the Massachusetts courts in 1830. Under this rule there is no statutory list of trust investments, and in the absence of a direction to the contrary contained in the trust instrument, a trustee is free to invest the trust funds in any class of securities, subject only to the requirement that the investment be one which a prudent person would make. As Justice Putnam stated in *Harvard College v. Amory*:

> All that can be required of a trustee to invest is that he shall conduct himself faithfully and exercise sound discretion. He is to observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.[25]

Throughout the 1940s and 1950s American law reformers debated the relative merits of the legal list and the prudent person rule but by the mid 1950s the trend towards the prudent person rule had clearly become dominant, and by 1981 approximately 80% of American jurisdictions had adopted the prudent investor rule.[26]

A common criticism of the prudent person rule, as it has been effected in the United States, is that it created an overly restrictive approach to trustee

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[25] *Harvard College v. Amory*, (1830) 9 Pick. 446.

[26] *Supra* note 6 at 5. This number has almost certainly increased since the 1982 report.

investment by not allowing for a net approach to determining when a trustee has acted prudently. Rather than looking at the overall investment strategy of a trustee to determine if prudence has been exercised, each individual investment has been analyzed in isolation. As such, a trustee who has made one risky investment and 99 conservative ones may still find himself liable for any loss caused by that one investment, even though the trustee has pursued a sound and profitable investment strategy.[27]

The Manitoba Law Reform Commission addressed this problem by recommending that a trustee who is sued for imprudence may defend such an action by showing a prudent investment policy which was not speculative or imprudent even though a particular investment viewed in isolation may have been.[28] American law reformers have also recognized this problem and the National Conference of Commissioners on Uniform State Laws implemented a similar recommendation to that of the Manitoba Law Reform Commission in the *Model Uniform Prudent Investor Act* adopted at its Summer 1994 meeting.

A further problem with the traditional prudent person rule identified by the Manitoba Commission, and addressed in the Manitoba legislation, concerns the varying level of skill possessed by trustees. It was the view of the Manitoba Commission that a professional acting as a trustee for profit should be held to a higher standard of care than a small trustee who may be acting as a favour to a friend. However upon reviewing the case law the Manitoba Commission concluded that a section, such as Manitoba's then section 81 of *The Trustee Act*, which allows the court to relieve a trustee from liability for a technical breach if he has acted "honestly, reasonably, and ought fairly to be excused"[29] had been misapplied. According to the Manitoba Commission the phrase "ought fairly to be excused" has been used by the courts to provide protection to lay trustees.[30]

American law reformers have chosen to follow a different route than

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[27] *Supra* note 12 at 43.

[28] *Supra* note 6 at 27. This recommendation is currently contained in Manitoba's legislation at s. 79 (Defence Based on Investment Policy).

[29] *The Trustee Act*, C.C.S.M. c. T160.

[30] *Supra* note 6 at 19-22.

Manitoba in regards to the standard of care to be imposed on lay trustees and have instead provided a statutory list of criteria in Section 2 of the *Model Uniform Prudent Investor Act*. This list is not meant to be an exhaustive definition of prudence, but rather is indicative of the presence or absence of prudence. Additionally the *Model Act* includes a specific statement that:

> a trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.[31]

Unlike the Manitoba section which protects a lay trustee this section raises the standard for a sophisticated trustee.

RECOMMENDATIONS

Recommendation 1

The Uniform Law Section revisit the 1970 Uniform Prudent Investor Act.

Recommendation 2

The Uniform Law Section endorse the "Prudent Investor" approach.

Recommendation 3

The Uniform Law Section use the guide of the 1994 NCCUSL Model to review the following issues:

(a) Standard of care especially for professional fiduciaries.
(b) Portfolio management and strategy.
(c) Review of inception assets.
(d) Delegation of decision making power.

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[31] National Conference of Commissioners on Uniform State Laws, *Model Uniform Prudent Investor Act*, Section 2(f).

UNIFORM LAW CONFERENCE OF CANADA

EXAMPLES OF PRUDENT INVESTOR LEGISLATION

1. **Mr. Justice Putnam's articulation of the rule as stated in *Harvard College v. Amory.***

   All that can be required of a trustee to invest, is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.

2. **The 1942 American Model Act**

   In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable incomes as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

3. **Conference of Commissioners on Uniformity of Legislation in Canada 1970 Model Act & The New Brunswick and Yukon Territory Legislation**

   Unless a trustee is otherwise authorized or directed by an express provision of the law or of the will or other instrument creating the trust or defining his powers and duties, he may invest trust money in any kind of property, real, personal, or mixed, but in so doing, he shall exercise the judgment and care that a man of prudence, discretion and intelligence would exercise as a trustee of the property of others.

4. Northwest Territories Legislation

Unless otherwise authorized or directed by an express provision of the law or of the will or other instrument creating the trust or defining the duties and power of the trustee,

(a) Subject to paragraph (b), a trustee is authorized to invest in every kind of property, real, personal or mixed; and

(b) in investing money for the benefit of another person, a trustee shall exercise the judgment and care that a man of prudence, discretion and intelligence would exercise as a trustee of the property of others.

5. Manitoba Legislation

(1) Subject to any express provision of the law or the will or other instrument creating the trust or defining the duties and powers of the trustee, and subject to subsection (2), a trustee may invest in any kind of property, real, personal, or mixed.

(2) Subject to any express provision of the will or other instrument creating the trust, in investing money for the benefit of another person, a trustee shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.

6. 1994 American Uniform Prudent Investor Act

SECTION 1. PRUDENT INVESTOR RULE

(a) Except as provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in Sections 2 through 9.

(b) The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.

SECTION 2. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purpose, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;
(2) the possible effect of inflation or deflation;
(3) the expected tax consequences of investment decisions or strategies;
(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
(5) The expected total return from income and the appreciation of capital;
(6) other resources of the beneficiaries;
(7) needs for liquidity, for regularity of income, and for preservation or appreciation of capital; and
(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more beneficiaries.

(d) A trustee shall take reasonable steps to verify facts relevant to the investment and management of trust assets.

(e) Subject to the standard of this [Act], a trustee may invest in any kind of property or type of investment.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.