Bearmoor, LLC
Asset Management and Fiduciary Consultants

Unique Asset Partners

November 4, 2015

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and
Brad Davidson/Unique Asset Partners LLC

Account Level Administration and Investment Responsibilities – Specifically Unique and Hard to Value Assets

Your Presenters - - -

- Brad Davidson
  - Principal, Spardata
  - Managing Member, Unique Asset Partners
  - 28 years experience valuing unique assets

Don Moore

- Principal, Bearmoor LLC
- Former OCC examiner

Overview

- Overview and discussion specific to the requirements for unique and hard to value assets.
  - ✓ Opportunity
  - ✓ Expertise
  - ✓ Knowledge
  - ✓ Valuation
  - ✓ Revenue
- Overview discussion of the regulations and standards impacting the fiduciary business regarding the administration and investment of account assets – with specific emphasis on unique and hard to value assets.
  - ✓ Uniform Prudent Investor Act
  - ✓ Regulation 9
  - ✓ Banking Circular 2008-10
  - ✓ OCC Handbook for Unique and Hard to Value Assets

Overview

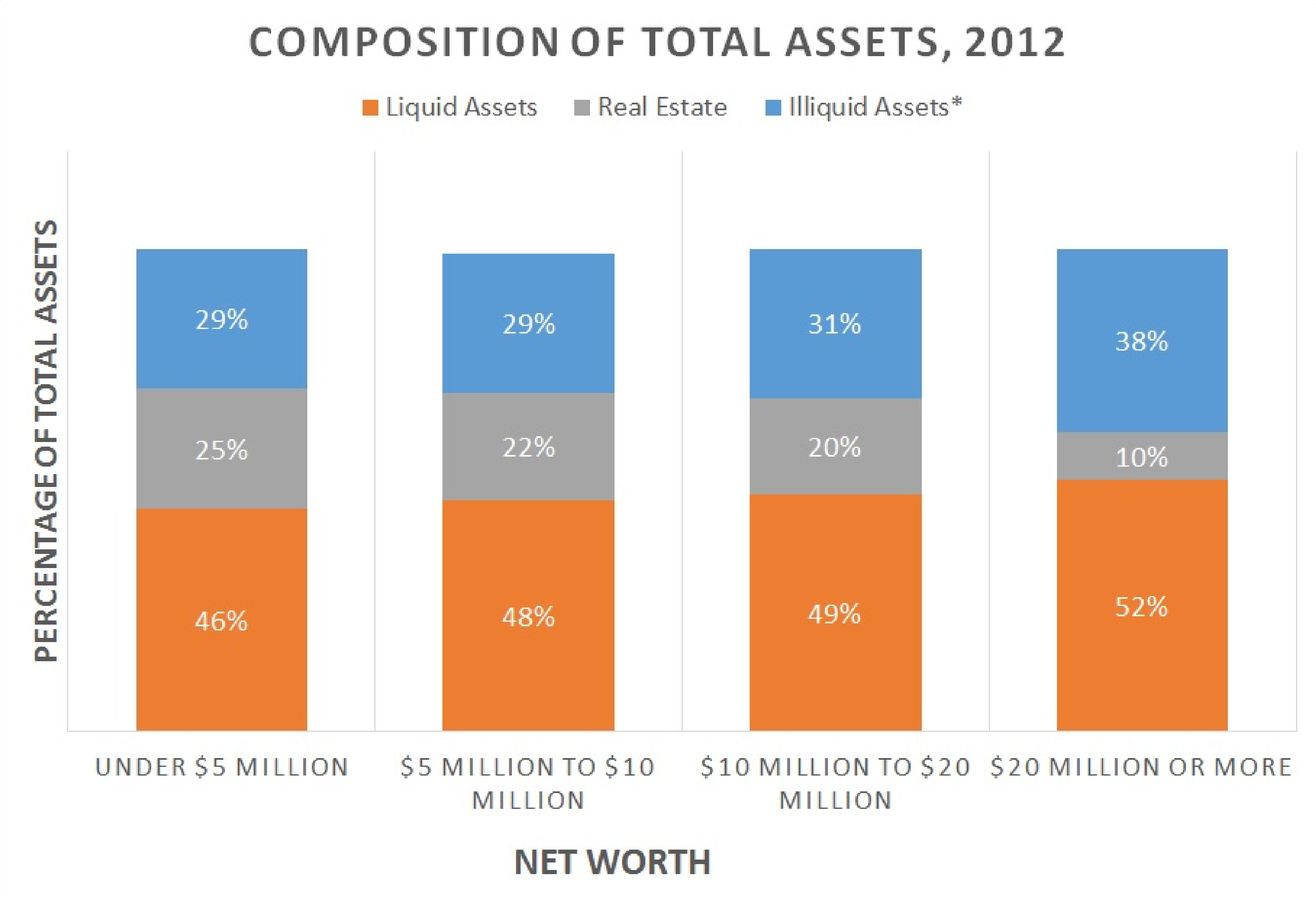
- Discussion on the types of accounts and the responsibilities associated with each account.
  - ✓ Custody
  - ✓ Managed and Non-Managed IRAs
  - ✓ Investment Management Accounts – with and without assets above the line
  - ✓ Trust Accounts – full discretion and directed
- Application and understanding of the standards specific to each type of account.
- Summation and Comments; including questions and answers.

Overview

Direct ownership	
Real Estate	Closely-Held Businesses
Farms & Ranches	Loans and Notes
Timber	Life Insurance
Mineral Interests	Tangible Assets & Collectibles

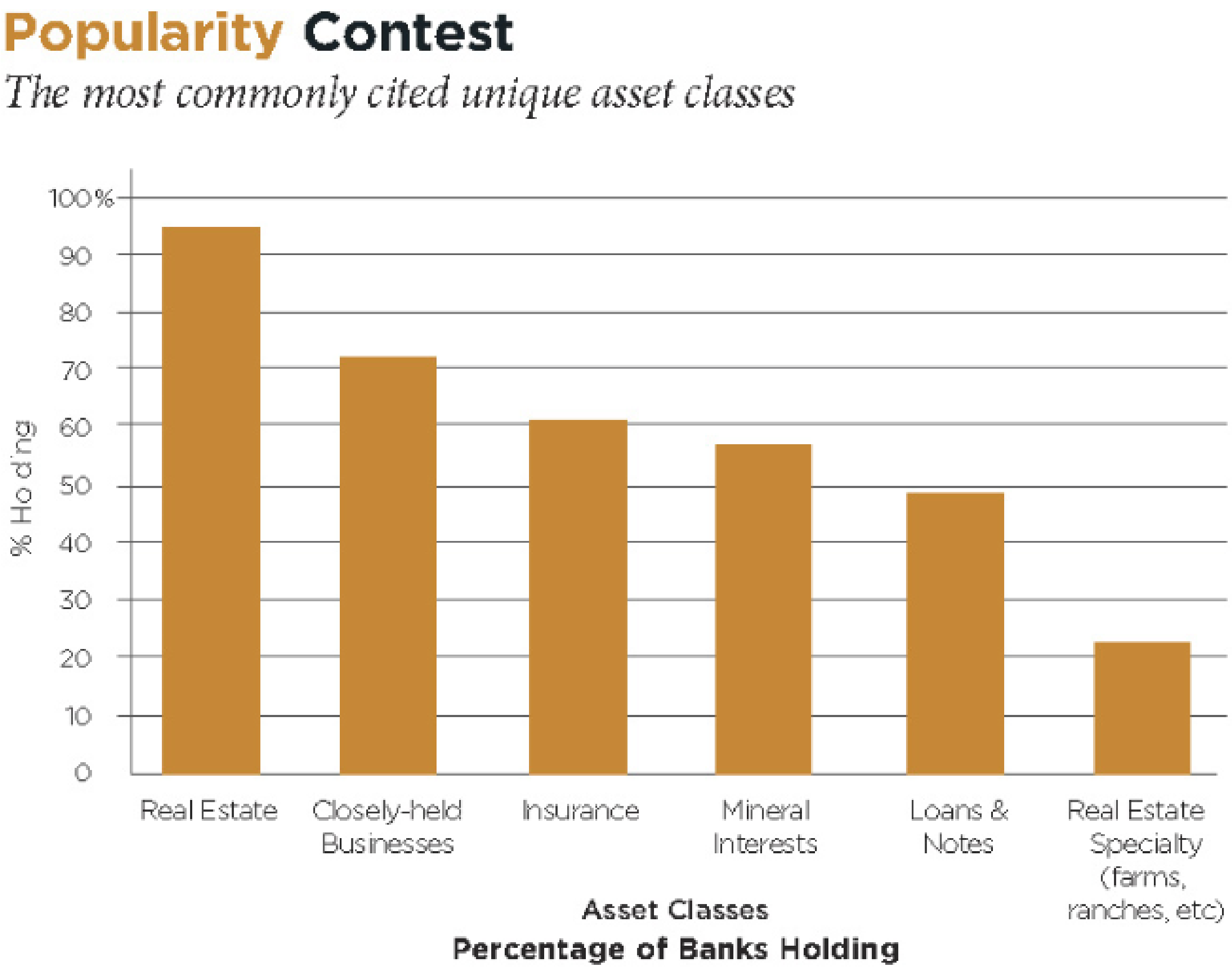
Indirect ownership	
Business Interests	Non-Publicly Traded Stock
Warrants/Options	General Partnership Interests
Real Estate LP Interests	Limited Partnership Interests
Oil & Gas LP Interests	Asset Holding Companies
REITs	Private Equity
Hedge Funds	Royalty Interests
Promissory Notes	Preferred Interests

IRS Study:
Unique Assets = Traditional Investments



*INCLUDES: REAL ESTATE PARTNERSHIPS, CLOSELY-HELD STOCK, PRIVATE EQUITY/HEDGE FUNDS, LIMITED PARTNERSHIPS, OTHER NON-CORPORATE BUSINESS ASSETS, MORTGAGES AND NOTES, RETIREMENT ASSETS, DEPLETABLES/INTANGIBLES, ART, AND OTHER ASSETS

Top 6 Unique Asset Classes



Example of Services Needed:

Income-producing real estate:

1. payment of property taxes and insurance
2. conduct annual inspections
3. provide leasing services (including collection of rents)
4. supervise contractors (i.e. lawn maintenance, asbestos removal, repairs and maintenance, etc.)
5. handle asset sales
6. process distributions
7. vote shares for annual meeting and other corporate actions
8. assist with valuation.

Overview

"What's Required?"

The services needed depend on the account type

Type of Account	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	•	•	
Managed Individual Retirement Accounts	•	•	•
Unmanaged IRAs (just custody)	•	•	
Managed Investment Management (IM) Accounts (assets above the line—supervised)	•	•	•
Managed IM Accounts (assets below the line—unsupervised)	•	•	
Revocable Trust Accounts with organization as trustee (above the line)	•	•	•
Revocable Trust Accounts with organization as trustee (below the line)	•	•	
Irrevocable Directed Trust Accounts (organization directed to hold the asset)	•	•	
Irrevocable Trust Accounts with organization as trustee (above the line)	•	•	•

Endnotes

1. The valuation requirement will vary depending on individual state and federal regulations and pronouncements. In addition, the actions performed by the institution will also dictate.
2. Administration of all accounts is a requirement.
3. Management is required for *all* assets over which the institution has investment responsibility.

— Donald F. Moore, Jr., Bearmoor LLC

Uniform Prudent Investor Act

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Objectives of the Act

- The standard of prudence is applied to any investment as part of the total portfolio, rather than to individual investments. In the trust setting the term “portfolio” embraces all the trust’s assets.
- The tradeoff in all investing between risk and return is identified as the fiduciary’s central consideration.
- All categoric restrictions on types of investments have been abrogated; the trustee can invest in anything that plays an appropriate role in achieving the risk/return objectives of the trust and that meets the other requirements of prudent investing.
- The long familiar requirement that fiduciaries diversify their investments has been integrated into the definition of prudent investing.
- The much criticized former rule of trust law forbidding the trustee to delegate investment and management functions has been reversed. Delegation is now permitted, subject to safeguards.

Section 2: Standard of Care; Portfolio Strategy; Risk and Return Objectives

- A trustee shall invest and manage trust assets as a prudent investor would, by considering the:
  - Purposes,
  - Terms,
  - Distribution requirements,
  - And other circumstances of the trust.
- In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- 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 a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

Section 2: Standard of Care; Portfolio Strategy; Risk and Return Objectives

- 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:
  - General economic conditions
  - The possible effect of inflation or deflation
  - The expected tax consequences of investment decisions or strategies
  - 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
  - The expected total return from income and the appreciation of capital
  - Other resources of the beneficiaries

Section 2: Standard of Care; Portfolio Strategy; Risk and Return Objectives

- 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:
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
  - A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

Section 2: Standard of Care; Portfolio Strategy; Risk and Return Objectives

- Trustee may invest in any kind of property or type of investment consistent with the standards of this.
- 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.
- A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

Section 9: Delegation of Investment and Management Functions

- In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
- By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

Regulation 9

§ 9.2 Definitions

Applicable law means the law of a state or other jurisdiction governing a national bank's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

Fiduciary account means an account administered by a national bank acting in a fiduciary capacity.

Fiduciary capacity means: trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.

Investment discretion means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account. A bank that delegates its authority over investments and a bank that receives delegated authority over investments are both deemed to have investment discretion.

§ 9.4 Administration of Fiduciary Powers

Responsibilities of the board of directors. A national bank's fiduciary activities shall be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

Use of other personnel. The national bank may use any qualified personnel and facilities of the bank or its affiliates to perform services related to the exercise of its fiduciary powers, and any department of the bank or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

§ 9.5 Policies and Procedures

A national bank exercising fiduciary powers shall adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the bank's:

(a) Brokerage placement practices;

(b) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;

(c) Methods for preventing self-dealing and conflicts of interest;

(d) Selection and retention of legal counsel who is readily available to advise the bank and its fiduciary officers and employees on fiduciary matters; and

(e) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

§ 9.6 Review of Fiduciary Accounts

***Pre-acceptance review*.** Before accepting a fiduciary account, a national bank shall review the prospective account to determine whether it can properly administer the account.

***Initial post-acceptance review*.** Upon the acceptance of a fiduciary account for which a national bank has investment discretion, the bank shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

***Annual review*.** At least once during every calendar year, a bank shall conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

§ 9.11 Investment of Fiduciary Funds

A national bank shall invest funds of a fiduciary account in a manner consistent with applicable law.

§ 9.12 Self-dealing and Conflicts of Interest

Investments for fiduciary accounts—

(1) ***In general.*** Unless authorized by applicable law, a national bank may not invest funds of a fiduciary account for which a national bank has investment discretion in the stock or obligations of, or in assets acquired from: the bank or any of its directors, officers, or employees; affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank.

(2) ***Additional securities investments***. If retention of stock or obligations of the bank or its affiliates in a fiduciary account is consistent with applicable law, the bank may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

§ 9.12 Self-dealing and Conflicts of Interest

Loans, sales, or other transfers from fiduciary accounts—

(1) ***In general***. A national bank may not lend, sell, or otherwise transfer assets of a fiduciary account for which a national bank has investment discretion to the bank or any of its directors, officers, or employees, or to affiliates of the bank or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank, unless:

(i) The transaction is authorized by applicable law;

(ii) Legal counsel advises the bank in writing that the bank has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the bank, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in § 9.18(b)(8)(iii) for defaulted investments; or

(iv) Required in writing by the OCC.

Account Reviews:
Banking Circular 2008-10

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Policy for Account Reviews

- Policies should define scope, frequency, and level of account reviews.
  - Combined or separate administrative and investment reviews?
  - Risk-based criteria for less frequent reviews.
  - Triggers to accelerate reviews?
- Policies should address documentation, exception reporting and tracking, and record retention requirements.
- Risk-scoring defines frequency

Banking Circular 2008-10; Annual Reviews of Fiduciary Accounts

Background and Purpose (Issued 3/27/2008)

The OCC has developed this guidance to clarify the agency's expectations for the depth and breadth of **annual investment reviews**. Specifically, the guidance will:

- Identify information that should be considered in a bank's annual investment review process;
- Address the importance of ensuring that **all account assets, including unique and hard-to-value assets**, are reviewed for appropriateness and consistency with account investment objectives;
- Provide information on the different types of reviews currently used by the industry, including an overview of their strengths and limitations; and
- Emphasize the need for thorough documentation of reviews and a strong "exception" tracking system.

Banking Circular 2008-10; Annual Reviews of Fiduciary Accounts

Elements of an Effective Annual Review Process

In addition to being a regulatory requirement, annual investment reviews are among the most useful tools bank fiduciaries have to ensure they meet their fiduciary responsibilities and properly administer their customers' accounts. An annual investment review is a point-in-time evaluation of both account assets and objectives. The process should:

- Ensure that account investment objectives are current and appropriate, and that **investments are consistent with those objectives.**
- Ensure that the investment review provides for an **annual assessment of the portfolio in its entirety. This is particularly important when unique assets make up a portion of the account.**
- Include exception tracking that identifies and provides for follow up and resolution of exceptions such as securities not included on "approved" or "retention" lists, assets posing potential conflicts of interest, or asset concentrations.
- Include performance measurements and a process for handling performance outliers.
- **Ensure that each asset is valued using an appropriate valuation process.**

Banking Circular 2008-10; Annual Reviews of Fiduciary Accounts

Unique and Hard to Value Assets

Unique or hard-to-value assets such as real estate, oil, gas and mineral interests, farms and ranches, timberland, closely held businesses, loans, and personal property should be included as part of the annual investment review. The review of these assets should:

- Be **sufficiently detailed** to document the bank's determination that the asset is appropriate for the investment objectives of the account and should be retained.
- Include a careful review of Asset Retention letters because these investment directions can require a bank to hold assets that may be inconsistent with the bank's investment strategies. A bank should accept Asset Retention letters only from authorized parties.
- Provide **updated asset valuations appropriate** for the type of asset and nature of account.[1]
- Ensure that proper insurance coverage is maintained on assets that warrant protection.

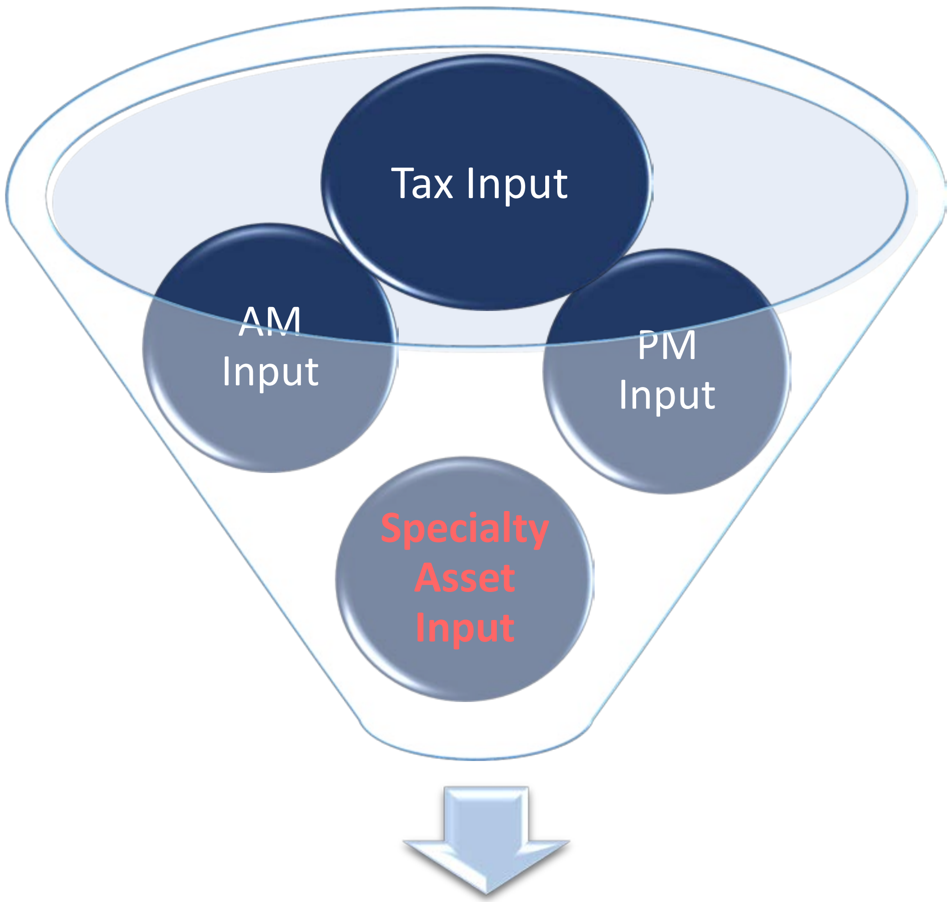
[1] For example, valuation of assets in charitable trusts may require appraisals that comply with IRS rules such as Internal Revenue Code Section 6695A. Other rules addressing valuation of real estate or closely held companies may also apply.

Banking Circular 2008-10; Annual Reviews of Fiduciary Accounts

Annual Review and Assessment

Various types of assets, including unique assets, held in a single account may be reviewed at different times. However, the investment review process **must ensure that an assessment of the account as a whole is made at least annually. This is particularly important when unique assets make up a substantial portion of the account.**

Banking Circular 2008-10; Annual Reviews of Fiduciary Accounts



All data combined to complete review

Elements – Typical Investment Reviews

- Investment objective based on current needs
- Asset allocation/rebalancing
- Approved assets (off-list)
- Conflict of interest
- Diversification (concentration)
- Asset valuation
- Special assets (RE, CH, LP, etc.)
- Liquidity
- SRI restrictions

Everyday Challenges

- Taking time to do it right
- Records retention/subpoena impact
- Redundant records? Rely on account files?
- Exception resolution
- Independence
- Feedback when shortfalls are discovered
- Does reviewer look at the account documentation when answering questions?
- Management reporting/risk tolerance

Regulatory Feedback

- FRB & OCC
  - Documentation, documentation, documentation!
  - Resolution of exceptions
  - Accuracy of data for all assets – Unique & Hard to Value
  - Thoroughness, accuracy of automated exceptions
  - Coding errors
  - Failure of process to detect exceptions
  - Large volume of exceptions in spite of process

OCC Handbook:
Unique and Hard to Value Assets

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OCC Handbook: Unique and Hard to Value Assets

Unique and Hard to Value Assets Handbook (Issued August 2012)

Most banks do not actively buy and sell this type of asset. They are usually received in-kind or deposited during the life of the accounts. No matter how these assets are received by banks, **proper administration and operational controls are critical.**

Asset management risks are inherent in individually managed portfolios, but the inclusion of unique assets further **increases a bank's risk.** Risk increases because these assets often require special expertise to manage, are sometimes subject to special ownership rules, **and are frequently hard to value.**

A bank's failure to properly manage unique assets prudently and legally can **increase the bank's risks**, particularly its operational, compliance, reputation, and strategic risks. This in turn may adversely affect the bank's earnings and capital.

OCC Handbook: Unique and Hard to Value Assets

Unique and Hard to Value Assets Handbook (Continued)

The bank fiduciary must ensure that it **follows sound fiduciary principles when administering unique assets.**

A bank fiduciary can expose itself to compliance risk if it **fails to adhere to the bank's policies and procedures or fails to secure needed expertise.**

Because unique asset market values are associated with a specific asset, **financial reviews have to be tailored to the particular asset and its real or potential profitability.**

Risks may arise if a bank does not have the expertise to administer an asset type, monitor the condition of the asset, or **assess a value for those assets**, and the bank is ultimately required to outsource those processes.

OCC Handbook: Unique and Hard to Value Assets

Risk Management

The specialized expertise needed to manage, analyze, **and value** unique assets makes sound risk management processes essential.

Risk Supervision

The bank fiduciary has a duty to maintain and protect the value of a trust's assets and to make them productive. The following systems should be included in an effective risk supervision process:

- A **review of each asset annually** in conjunction with a review of the account's more readily marketable financial assets.
- Policy guidelines for **valuation frequency and methods**.
- Sufficient expertise to monitor any third party managing these assets. This oversight is particularly critical when unique assets such as real estate, oil, gas, or mining interests are held in a fiduciary account.
- Processes to provide appropriate insurance coverage and ensure relevant taxes are paid.

OCC Handbook: Unique and Hard to Value Assets

Risk Supervision (Continued)

- A process to ensure and track timely management actions and documentation, particularly in terms of sale decisions.
- A process to track income from unique assets and to ensure payments are received and appropriate action is taken when not received in a timely manner.
- Controls, such as audit and compliance reviews, to ensure the bank follows its policies and procedures appropriately.

Risk Assessment

A risk assessment helps the bank identify its risks, determine how to **measure** those risks, and assess the quality of the controls and monitoring systems. Management should focus on the following items when developing its risk assessment:

- Types and **volume** of unique assets managed in the bank; and the types of accounts holding those assets.
- Expertise needed to manage the volume and complexity of unique assets.
- Sources of information and methodology used to value these assets.

OCC Handbook: Unique and Hard to Value Assets

Risk Assessment (Continued)

- Adequacy of systems to handle the volume of assets, **the valuation of the various types of assets**, and the bank's ability to provide timely management reports that document the volume, value, and performance of these assets both individually and collectively.
- Adequacy of audit and compliance oversight and testing, including BSA/AML and OFAC.
- Adequate documentation, event tracking, and exception reporting systems and mechanisms.

Risk Control

Risk controls are policies, procedures, processes, and systems that help control and mitigate risk.

OCC Handbook: Unique and Hard to Value Assets

Investment Reviews 12 CFR 9.6

Initial post-acceptance review–12 CFR 9.6(b): Upon acceptance of a fiduciary account for which a bank has investment discretion, the bank shall conduct a **prompt review** (approximately 60 days after substantial funding of the account) **to evaluate all assets of the account** to ensure they are appropriate. The trust department should also obtain the **most current market values** for these assets to ensure the bank has the most accurate values on its books.

Annual review–12 CFR 9.6(c): At least once during every calendar year, a bank shall conduct a **review of all assets** of each fiduciary account for which the bank has investment discretion to evaluate whether the assets are appropriate, individually and collectively, for the account. The annual review **should ensure valuations are appropriate**, inspections have been addressed, and taxes and insurance are current.

OCC Handbook: Unique and Hard to Value Assets

Valuations – Closely-Held Businesses

The bank should have a sound process to determine when a formal valuation is obtained. The need to determine the value of ownership interests in closely held business assets arises in a number of situations. For example, the following all require that a value be placed on the business as an ongoing concern: the sale of the stock of a closely owned company; the sale of interests in a partnership business; diversification into more liquid assets; tax calculations; marital and corporate dissolutions; buy-sell agreements; stock option plans; recapitalizations; and succession planning. The bank fiduciary must be able to demonstrate that a reasonable approach was taken in valuing these assets. IRS Revenue Ruling 59–60 provides general guidance on valuing stocks of closely held assets where market quotations are not available.

The bank fiduciary **must also have current fair market values** of these assets **for its quarterly reporting on Schedule RC-T in the bank's call report,** as well as for assets held in an IRA. Formal appraisals are needed when an ownership interest is claimed as a charitable donation or as part of an employee stock ownership plan. **In addition, an accurate valuation is required under 12 CFR9.6(c) and 12 CFR 150.220 to conduct an annual investment review on a fiduciary account for which the bank has discretion.**

Custody Accounts

- Contractual agreement/instrument
- State laws regarding custody administration
- Regulatory handbooks
- Governing instrument
- IRC
- IRS Form 1099-R and 5498

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Managed IRA Accounts

- Governing instrument
- State laws regarding fiduciary activities (including UPIA)
- 12 CFR 9.6(a, b and c)
- IRC
- IRS Form 1099-R and 5498

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Non-Managed IRA Accounts (just custody)

- Governing instrument
- IRS Form 1099-R and 5498
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Managed IM Accounts (above the line)

- Governing instrument
- State laws regarding fiduciary activities (including UPIA)
- 12 CFR 9.6(a, b and c)
- Best practices including Investment Policy Statement (only for assets in the acccount for which investment responsibility is required)
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Managed IM Accounts (some assets below the line)

- Governing instrument
- State laws regarding fiduciary activities (including UPIA)
- 12 CFR 9.6(a, b and c)
- Best practices including Investment Policy Statement
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Revocable Trust Accounts (above the line)

- Governing instrument
- State laws regarding fiduciary activities (including UPIA)
- 12 CFR 9.6(a, b and c)
- Best practices including Investment Policy Statement
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Revocable Trust Accounts (below the line)

- Governing instrument
- State laws regarding fiduciary activities (specifically for administrative matters)
- Letters of Direction for the appropriate power holder
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Irrevocable Directed Trust Accounts (we are directed to hold the asset)

- Governing instrument
- State laws regarding fiduciary activities (where Directed Trusts are allowed e.g. DE, SD, NH, WY, AK)
- 12 CFR 9.6(a, b and c) for assets where discretion required
- IRC for ILITs, GRATs, GRUTs, CRATs and CRUTs
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Irrevocable Trust Accounts (above the line)

- Governing instrument
- State laws (including UPIA)
- 12 CFR 9.6(a, b and c)
- Best Practices including Investment Policy Statement
- Custody and recordkeeping requirements

TYPE of ACCOUNT	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	√	√	
Managed IRAs	√	√	√
Unmanaged IRAs (just custody)	√	√	
Managed IM Accounts (assets above the line - supervised)	√	√	√
Managed IM Accounts (assets below the line - unsupervised)	√	√	√
Revocable Trust Accounts with org as trustee (above the line)	√	√	√
Revocable Trust Accounts with org as trustee (below the line)	√	√	
Irrevocable Directed Trust Accounts (org directed to hold the asset)	√	√	
Irrevocable Trust Accounts with org as trustee (above the line)	√	√	√

Summary

"What's Required?"

The services needed depend on the account type

Type of Account	Valuation[1]	Administration[2]	Management[3]
Custody Accounts	•	•	
Managed Individual Retirement Accounts	•	•	•
Unmanaged IRAs (just custody)	•	•	
Managed Investment Management (IM) Accounts (assets above the line—supervised)	•	•	•
Managed IM Accounts (assets below the line—unsupervised)	•	•	
Revocable Trust Accounts with organization as trustee (above the line)	•	•	•
Revocable Trust Accounts with organization as trustee (below the line)	•	•	
Irrevocable Directed Trust Accounts (organization directed to hold the asset)	•	•	
Irrevocable Trust Accounts with organization as trustee (above the line)	•	•	•

Endnotes

1. The valuation requirement will vary depending on individual state and federal regulations and pronouncements. In addition, the actions performed by the institution will also dictate.
2. Administration of all accounts is a requirement.
3. Management is required for *all* assets over which the institution has investment responsibility.

— Donald F. Moore, Jr., Bearmoor LLC

“Road Map” to compliance

1. Review and recommend (“stress test”)
2. Process remediation (“stop the leaking”)
3. Risk rate each account
4. Fee discipline/profit enhancement
5. Training
6. Account remediation (“bail out the boat”)