

Risks Associated with Fiduciary Activities

- Operational
 - Gathering
 - Processing
 - Reporting
- Compliance
 - Investment law
 - Securities law
 - Tax law
 - Contract law
 - Environmental law
 - Consumer protection law
- Strategic
 - Activities
 - Resources
- Reputation
 - Expectations vs. delivery
 - Combination of other categories

Review of fiduciary accounts

- Pre-acceptance review (12 CFR § 9.6(a)): Before accepting a fiduciary account, a national bank shall review the prospective account to determine whether it can properly administer the account.
- Documentation of accounts (12 CFR § 9.8(a)): A national bank shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts

Life Cycle of an Opportunity

- Identify Opportunity
 - How did we identify this opportunity?
 - Client/COI referral?
 - Who is the client?
 - Possible reputation risk?
 - If entity, who will make decisions?
 - What is our role?
 - Does role match client expectations?
 - If successor appointment, why change provider?
 - What are the assets?
 - Cash?
 - Special assets?
 - If yes, do we have resources and information to properly administer?
 - If we don't have resources, how will that affect fees?

- Where are we doing business?
 - Foreign or domestic client?
 - Ownership?
 - Situs?
 - Do we have authority to act?
 - What information do we have?
 - Governing documents?
 - Statements?
 - Other supporting documents?
 - What are the proposed fees?
 - Does revenue match risk?
 - What stage of the sales process are we in?
 - Do we have enough time to review opportunity?
 - Can we make a decision based on the available information?
 - Have we made commitments?
- Consultation with Opportunity Team
 - Why would team want to discuss?
 - Determine if opportunity warrants further discussion
 - Seeking confirmation that we can serve in role
 - Determine if enough information has been provided to make decision
 - Provide guidance to team for current and future opportunities
 - Position as resource to team
 - Strengthen partnership among colleagues
 - Submission of Opportunity for Review
 - Opportunity team provides summary of opportunity
 - Relationship team and office identified
 - Pertinent documentation submitted
 - Intake team reviews submission, may ask preliminary questions based on information
 - Review of Opportunity
 - Review based on proposed role
 - Investment opportunity
 - Individual
 - Who makes investment decisions?
 - Titling for joint ownership?
 - Concentrated positions?
 - Tax cost basis information?
 - Transactions?
 - Fees?
 - Trusts
 - Who makes investment decisions?

- Does information confirm authority to hire?
 - If no supporting information, what does governing law state?
 - Private entity (e.g., Partnership, LLC)
 - Who has authority to make decisions?
 - Document authorizing hiring of agent/advisor?
 - If multiple authorized parties, number required to act?
 - Other responsibilities?
 - Responsibilities identified?
 - Enough information to meet expectations?
 - Trust opportunity
 - Copy of all documents?
 - Original agreement/will?
 - Amendments/codicils?
 - Tax information?
 - Review of instrument
 - Able to follow trust terms?
 - Terms present any challenges/risks?
 - Provisions requiring further legal review?
 - Who has investment powers?
 - If not us, are roles clearly defined?
 - Supporting documents note roles?
 - If successor, does document protect successor from liability?
 - Identify income, estate tax liability?
 - Can we meet duties?
 - Duty of loyalty?
 - Duty of impartiality?
 - Duty to inform?
 - Duty to account?
 - Any “particular” terms?
 - Particular person?
 - Particular asset?
 - Particular decision?
- Enhanced Review
- Identification of significant risk/issues
 - Additional due diligence due to client/assets
 - Escalation to senior management

Opportunity #1

- Clients of a significant relationship present an opportunity for a successor trusteeship
- Trust size: Approximately \$15 million
- Would serve as co-trustee with two individuals
- Trust provisions
 - o Discretionary income and principal to grantor's issue and descendants
 - Income currently distributed quarterly to grantor's three children
 - o Shared investment authority; written direction from majority of trustees required
 - o Compensation clause for named trustee
- Assets
 - o Real property
 - 80% of portfolio
 - Property owned directly by trust
 - Extraction of natural resources from property
 - Approximately \$1 million in sales
 - Endangered species resides on portion of property
 - o 50% ownership interest in LLC
 - Manager of business operations on property
 - Negotiates contracts with wholesalers
 - Owns equipment used for business and buildings/houses on property
 - Income, expenses related to business directly goes to or comes from trust
 - o Mineral rights
 - Listed on trust account statement
 - According to family advisor, rights deeded to separate mineral interest trust
 - o Investment portfolio managed and custodied at another financial institution
- Liabilities
 - o Loan payable to current corporate trustee
 - Used to purchase additional real property
 - o Line of credit
 - About 20% of line used
 - Used to provide liquidity and avoid liquidation of investment portfolio

Opportunity #2

- A center of influence presents a successor trusteeship opportunity
- Trust size: \$50 million
- Testator created a trust under will for the benefit of their spouse
- Would serve with two individual trustees
- Estate administration has lasted 15 years
- Litigation resulted in removal of executors/trustees named in will
- Provisions of trust revised pursuant to a settlement agreement
 - o Spouse to receive greater of net income or \$250,000 annually
 - o Annual principal distribution of \$500,000
 - o Distributions at spouse's request to pay all costs associated with house, car, healthcare
 - o One time distribution of \$1 million if spouse demonstrates extreme financial hardship
 - o Corporate trustee has discretion to distribute principal for spouse's health, education, maintenance and support
- Trust included in spouse's estate
- Trust maintains a concentrated position in real estate
 - o Several positions directly owned by trust
 - o Trust has interest in partnership that maintains real estate portfolio
 - o Testator associated with issues/lawsuits associated with real estate
- Current corporate trustee unwilling to exercise discretion to distribute trust assets in order to create liquidity in portfolio

Opportunity #3

- A client refers a friend for an investment management opportunity
- Size of opportunity: \$10 million
- Prospect renounced U.S. citizenship
- Prospect presents passport and driver's license, each issued by different countries
- Account will be funded with cash
- Prospect provides statement from international bank confirming ownership of funds
- Prospect works in industry that requires licensing in countries where prospect conducts business

Opportunity #4

- Advisor for current client presents trusteeship opportunity
 - o Currently serve as investment manager for client
- Opportunity size: \$60 million
- Would serve as co-trustee with individual(s) for client's trust and trust created by client's spouse for client's benefit
 - o Client is current trustee
 - o Client is 80 but maintains independence
 - o Spouse passed away three years ago; trust for client's benefit not yet funded
- Investment portfolios owned by client and spouse held at four different institutions
 - o Advisor noted client's strong desire to continue to use one of the institutions to manage investments
 - o Trust documents provide individual trustees with right to relieve corporate trustee of all investment authority and responsibility with respect to any or all of trust assets
- About one-third of opportunity consists of several real estate properties owned by client and spouse
 - o Largest property has been listed and taken off the market several times over the last three years
- Trust of client's spouse owns voting and nonvoting shares of domestic investment holding company
 - o Trust owns 50% of voting shares; other 50% of voting shares owned by trust created by business partner of client's spouse
 - o Company owns 98% of voting shares in offshore investment holding company
 - o Client's spouse and former business partner of client's spouse each own 1% of shares
 - o Assets of company consist of cash and investible securities
 - o Advisor notes that company expected to wind down in next year

Opportunity #5

- A center of influence presents a successor trusteeship opportunity
- Trusts created by the grandmother of the center of influence
 - o One trust for the benefit of the grandmother's son and descendants
 - o One trust for the benefit of the grandmother's daughter and her descendants
 - o Son and daughter are each in their 80s
- Trustee has discretion to distribute income or principal to class of beneficiaries, which consists of family members
 - o In the past, funds have only been distributed to son and daughter
 - o Family members vary in age and levels of income
- Family members except son and daughter unaware of trusts' existence until recently
 - o Trusts created 50 years ago
- Suit filed by family against corporate trustee
 - o Proceeds from lawsuit will increase trusts' values from a combined \$2 million to a combined \$20 million
- Family working with attorney to divide and modify trusts
 - o Trusts would be divided to create separate trusts for each grandchild
 - o Details of modifications not provided
- Trust portfolios are primarily invested in fixed income
- Trusts also own a number of interests in mineral rights
 - o No values provided
- No language in trust document allowing removal of trustee
- Family requesting information to evaluate qualifications and skill in managing trusts and investments
 - o Response requested in two weeks