STATEMENT OF INVESTMENT OBJECTIVES, POLICY AND GUIDELINES
FOR THE
CITY OF ATLANTA POLICE OFFICERS'
PENSION FUND

ADOPTED APRIL 10, 2007

Amended April 12, 2011

STATEMENT OF INVESTMENT OBJECTIVES,
POLICY AND GUIDELINES
CITY OF ATLANTA POLICE OFFICERS' PENSION FUND

The Board of Trustees ("Board") of the City of Atlanta Police Officers' Pension Fund ("Fund"), hereby adopts this Statement of Investment Objectives, Policy and Guidelines ("Statement") which supersedes and replaces all prior Investment Policy Statement(s) and which is hereby incorporated into all existing and any future Investment Manager Agreements.

The persons ultimately responsible for making all decisions with regard to the administration of the Fund, including the management of Fund assets, and for carrying out this Investment Policy Statement on behalf of the Fund shall be each trustee of the plan.

This Statement has been chosen by the Board as the most appropriate policy for achieving the financial objectives as set forth in the Investments Objectives section of this document.

The Fund operates under both the Public Retirement Systems Investment Authority Lawof Georgia (included as Appendix A) and the Uniform Prudent Investor Act (included as Appendix B) used herein, meaning that in investing, the governing authorities of the systems, fund and plans shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it - not in regard to speculation but in regard to permanent disposition of funds considering probable safety of capital as well as probable income.

The Board's responsibilities are also further defined as follows: "The assets of the system shall be held in trust by the fiduciaries that are named to the system's governing board in accordance with the election or appointment procedure outlined in the Revised Statutes pertinent to that system. Such fiduciaries shall have exclusive authority and discretion to manage and control the assets of the system. The assets of the system shall be held for the exclusive purpose of providing benefits to members of the system and their beneficiaries and defraying reasonable expenses of administering the system."

The objective of this Statement is to foster an effective working relationship with the Fund's internal and external investment managers through a discipline of good communication. The Statement is intended to provide the Fund with a foundation, so that the Fund can effectively evaluate the performance of the investment managers and oversee the management of the Fund in a prudent manner.

This statement is not intended to remain static. At least annually, the Fund's staff and consultants will review this Statement and recommend changes. Recommendations from investment managers for improving policies, procedures and operations are always appreciated. Such recommendations should be addressed to the Board in written form.

Once an asset allocation decision is made regarding any investment manager, the trustees will enter into a contractual arrangement with the firm deemed best suited to

fulfill the objectives needed for the fund. No changes can be made to the asset allocation assignment awarded unless the investment manager is notified by the Board of the Fund in written form.

The horizon of the Fund is long term. The primary investment objective of the Board is to ensure that current and future benefit obligations are adequately funded in a cost-effective manner. In light of this objective, the preservation of capital and the achievement of sufficient total return to fund accrued and future benefit obligations are the primary concern. The risk-reward trade-off in the investment policy selected for implementing the objectives should be derived from an asset-liability focus.

PLAN CONSIDERATIONS

In establishing investment policy, the following facts about the Pension Fund should be considered:

1. Fund provisions are determined by City policy.

2. The Fund is funded by employee and City contributions.

3. Participants are relatively young.

4. Salary levels used for benefit calculations are closely related to inflation.

5. Benefit payments have a cost of living adjustment of up to 3% per year.

6. Cash flow projections show modest positive flows over the long term; however, shorter periods may be affected by early retirement programs. Liquidity levels need to be monitored closely and adjusted as required.

7. The Fund has unfunded liabilities.

8. The Fund represents the entire retirement and disability income source for participants.

9. The assumed earnings rate is 7.75%.

INVESTMENT MANAGER PERFORMANCE EVALUATION

The board understands that the risk of each portfolio should be considered. A portfolio that outperforms the benchmark but carries only half the overall risk is superior on a risk-adjusted basis to a portfolio that outperforms the benchmark and carries the full amount of market risk.

(1) PRESERVATION OF CAPITAL

As payment from the pension fund is often a major source of income for retirees and principal protection against the contingencies of death and disability for active workers, preservation of capital and realization of sufficient return to secure payment of the statutory benefit requirements of the System are fundamental objectives. Preservation of capital encompasses two goals:

- Minimizing the risk of permanent loss of principal for the fund

- Minimizing the erosion of the Fund's purchasing power as a result of inflation.

(2) DIVERSIFICATION

The primary means by which capital preservation will be achieved is through diversification of the fund's investments. Accordingly, the fund is allocated among asset groups with a low or negative covariance.

Within each asset group, further diversification will be achieved through systematic allocation to investment management styles providing broad exposure to different segments of the domestic fixed income and domestic equity markets or other approved asset classes.

The average volatility level (beta) for the total Fund's U.S. equity portfolio should fall within the range of 0.85 to 1.15 times the Russell 3000 equity index. The publicly traded bond sector of the portfolio should have a volatility level approximately 0.85 to 1.15 of the Barclays Capital Aggregate Bond Index.

(3) ASSET-LIABILITY FOCUS

The basic premise of the framework in which the asset allocation policy has been developed is the following: That the plan's assets do not exist in a vacuum but, rather, are there to fund the Fund's liabilities. Therefore, the risk and investment return alternatives from different asset mixes are derived in a framework that examines the impact on funded status contribution volatility, the projected ratio of active to retired employees, the benefits payment horizon and the sensitivity of benefits to economic variables, such as inflation.

SECTION TWO: CURRENT ASSET ALLOCATION

Academic research suggests that the decision as to how to allocate total assets among various asset classes will far outweigh security selection and other decisions in terms of impact upon portfolio performance. After reviewing the long-term performance and risk characteristics of various asset classes, balancing the risks and rewards of market behavior, and reviewing state legislation regarding investment options, the following asset classes were selected to achieve the plan objectives: Domestic Equities, Domestic Fixed Income, and cash equivalents.

Within each asset class several different asset investment styles are represented in plan's Target Asset Mix

	MIN	TARGET	MAX
DOMESTIC EQUITY			
All/Flex Cap	5%	7%	10%
Large Cap	25%	30%	35%
Mid Cap	10%	15%	20%
Small Cap	4%	9%	14%
INTERNATIONAL EQUITY	4%	9%	14%
TOTAL EQUITY*		**70%**	
FIXED INCOME			
Core	12%	17%	22%
Intermediate	7%	12%	17%
CASH	0%	1%	2%
TOTAL FIXED INCOME & CASH**		**30%**	

**Please note that Georgia state law (as of the current revision date of this policy) requires that no more than 70% of the plan's assets may be invested in equities. This limit increases to 75% effective 7/01/2011.*

***Please note that the fixed income managers' primary goal is to preserve principle. Changing economic conditions and various investment opportunities perceived by the trustees may make it desirable to make changes in the asset allocation. Asset styles and target ranges may be added or changed at any time for greater exposure to different asset categories.*

REBALANCING GUIDELINES

Market conditions will cause the Portfolio's investments in various asset classes to vary from the established target ranges. To remain consistent with the asset allocation guidelines established by this Investment Policy Statement, each asset class in the portfolio shall be reviewed on a quarterly basis. If the actual weighting varies by 5% or more from the recommended target range, the Trustees may rebalance back to the recommended allocation. The most likely scenario will be for the trustees to analyze the sector performance and make a decision as to whether it would be prudent for future investment opportunities.

SECTION THREE: PERFORMANCE MEASUREMENT

The trustees recognize that all investment styles go through cycles. Therefore, there will be periods of time in which the manager's investment style is out of favor relative to their designated index benchmark.

TOTAL FUND PERFORMANCE BENCHMARKS

Total fund performance and individual manager performance will be judged using, among other things, the following indices:

ASSET CLASS	BENCHMARKS
Domestic Large Cap Equities	Russell 1000 Index*
Domestic Mid Cap Equities	Russell MidCap Index*
Domestic Small Cap Equities	Russell 2000 Index*
International Equities	MSCI EAFE (net) Index or MSCI ACWI ex US Index**
Domestic Core Fixed Income	Barclays Capital Aggregate Bond Index***
Domestic Intermediate Fixed Income	Barclays Capital Intermediate Government/ Credit Bond Index***
Cash	91-Day Treasury Bill

ALL MANAGERS WILL BE EXPECTED TO OUTPERFORM THEIR ASSIGNED INDEX BENCHMARKS OVER A FIVE-YEAR MARKET CYCLE.

The board recognizes that the equity managers hired by the fund may employ an active investment style quite different than the exact composition of a designated benchmark index. It is understood that active investment styles will come in and out of favor versus a broad market index. Any active manager that does not outperform their designated benchmark over any rolling 1, 3, 5 year time period as specified in this section may be placed on probation and asked to appear before the trustees with 30 days notice.

*****The board may hire international equity managers that maintain different exposures to developed vs. emerging markets. Each manager will be evaluated and ultimately assigned a benchmark of either the MSCI EAFE (net) Index, the MSCI ACWI ex US Index, or other International or Global index – as deemed appropriate.. This benchmark will be used throughout the course of the relationship with that manager, unless the Board makes a specific decision to change the benchmark index.***

******The board recognizes that the fixed income managers hired by the fund may employ an active investment style quite different than the exact composition of the Barclays Capital indices listed above. It is understood that the fixed income managers will take active bets regarding maturity, duration, sector, and credit quality versus their***

designated benchmark index. Any active manager that does not outperform their designated benchmark over any rolling 1, 3, 5 year time period as specified in this section may be placed on probation and asked to appear before the trustees with 30 days notice.

PERFORMANCE OBJECTIVES FOR THE TOTAL FUND

- **CPI + 3.3%** Recognizing that inflation is the driving force behind future benefit needs, it is important that performance be measured relative to the rate of inflation. Over a period of one complete market cycle (defined as five years), the total fund is expected to earn approximately 3.3% per year over the Consumer Price Index.

- **Customized Index** Over time (5 year moving average), total fund performance is expected to out-perform an indexed portfolio comprised of 35% Russell 1000, 15% Russell MidCap, 10% Russell 2000, 5% MSCI EAFE (net), 5% MSCI ACWI ex US, 1% 3-Month Treasury Bills, 12% Barclays Capital Intermediate Government/Credit, and 17% Barclays Capital Aggregate Bond Index.

- **Actuarial Target** Over a period of one complete market cycle (defined as five years), the total fund is expected to meet its actuarial target of 7.75%.

- **Fully Funded** The fund is expected to remain fully funded with respect to the actuarial accrued liability.

PERFORMANCE OBJECTIVES FOR DOMESTIC EQUITY MANAGERS

1) At the Domestic Equity composite level, achieve a rate of return which exceeds the Russell 3000 by 100 basis points net of management fees over a full market cycle of five years.

2) At the Large/Mid/Small Cap composite level, achieve a rate of return which exceeds the assigned benchmark index of either the Russell 1000, Russell MidCap or the Russell 2000 respectively by 100 basis points net of management fees over a full market cycle of five years.

3) At the individual manager level, achieve a rate of return which exceeds the manager's benchmark index (to be assigned by the Board at the time the manager is funded) by 100 basis points net of management fees over a full market cycle of five years. Additionally, achieve performance results that rank in the top 40% of managers in the appropriate universe relevant to the designated style benchmark.

The board recognizes that the equity managers hired by the fund may employ an active investment style quite different than the exact composition of the economic sectors that comprise their respective benchmark index. It is understood that active investment styles will come in and out of favor versus the benchmark index. The current consultant and pension staff will monitor and update the board when an active manager's investment style has fallen out of favor with the broad markets.

PERFORMANCE OBJECTIVES FOR INTERNATIONAL EQUITY MANAGERS

1) At the International Equity composite level, achieve a rate of return which exceeds the MSCI EAFE (net) Index by 100 basis points net of management fees over a full market cycle of 5 years.

2) At the manager level, achieve a rate of return which exceeds the assigned benchmark index of either the MSCI EAFE (net) Index, MSCI ACWI ex US Index, or other International or Global index – as deemed appropriate (to be assigned by the Board at the time the manager is funded) – by 100 basis points net of management fees over a full market cycle of five years. Additionally, achieve performance results that rank in the top 40% of managers in the appropriate universe relevant to the designated benchmark.

The board recognizes that the equity managers hired by the fund may employ an active investment style quite different than the exact composition of the economic sectors that comprise their respective benchmark index. It is understood that active investment styles will come in and out of favor versus the benchmark index. The current consultant and pension staff will monitor and update the board when an active manager's investment style has fallen out of favor with the broad markets.

PERFORMANCE OBJECTIVES FOR DOMESTIC FIXED-INCOME

1) At the Domestic Fixed Income composite level, achieve a rate of return which exceeds the Barclays Capital Aggregate Bond Index by 50 basis points net of management fees over a full market cycle of five years.

2) At the manager level, earn an average annual return from income and capital appreciation which exceeds the assigned benchmark index of either the Barclays Capital Aggregate Bond Index or the Barclays Capital Intermediate Government/Credit Bond Index (to be assigned by the Board at the time the manager is funded) by 50 basis points net of management fees over a full market cycle of five years. Additionally, achieve performance results that rank in the top 40% of managers in the appropriate universe relevant to the designated style benchmark.

The board recognizes that the fixed income managers hired by the fund may employ an active investment style quite different than the exact composition of the sectors that comprise their respective benchmark index. It is understood that active investment styles will come in and out of favor versus the benchmark Index. The current consultant and pension staff will monitor and update the board when an active manager's investment style has fallen out of favor with the broad markets.

PROBATION

The Board will follow its time horizons, as set forth in this policy, when making judgments about indications of inferior performance. However, investment managers for the fund should be advised that the Board intends to track the interim progress toward multi-year goals. If there is a clear indication that performance is so substandard that reasonable hope of recovery to the manager's policy performance goals would require either high risk or good fortune, then the Board will not feel constrained by this policy to avoid an "early" decision to take corrective action. In addition to the items stated below any major organizational change that could warrant a review of the Investment Manager's relationship with the fund, which would include: 1) Change in investment professionals, 2) Significant account losses and 3) Change in ownership could warrant termination by the board.

THE TRUSTEES WILL NOTIFY FIRMS PLACED ON PROBATION IN WRITING.

ALL PROBATION CRITIERIA WILL BE CRITICALLY EVALUATED AFTER 4 QUARTERS (1 YEAR) OF MANAGER PERFORMANCE IS AVAILABLE FOR ANALYSIS.

PHASE ONE

Any money manager that fails to meet the Fund's investment criteria relative to its peers (top 40% of relative peer universe) for three consecutive quarters during any time period after four quarters (1 year) of performance measurement has been attained may be placed on probation. The consultant will measure the universe of investment managers for peer group evaluation.

If a money manager fails to meet the established trailing year performance objectives versus the designated benchmark by more than 100 basis points (net of fees) for 3 consecutive quarters, they may be placed on probation. Critical evaluation for probation status versus the benchmark shall begin after four quarters (1 year) of performance measurement has been attained. The firms on probation will be subject to:

- Intense scrutiny of their investment process and philosophy.
- A requirement to explain their substandard performance to the satisfaction of the Board and its Staff. This must be submitted in writing to each trustee within 30 days of probation notification.
- Manager will be required to bring performance up to stated investment objectives for three consecutive additional quarters in order to be removed from probation, without modifying their stated investment style.

PHASE TWO

If performance does not improve during phase one of the probation period, the trustees may take action towards either termination of the manager or extending the probation period to such a period that the Board deems appropriate.

Failure to comply with the conditions of probationary status will be grounds for notice of termination.

For those managers who have achieved 3 or more years of performance the following factors may lead to termination or placing a manager on probation:

- Performance below the median (50^{th} percentile) of their peer group over rolling three-year periods.
- Performance below the median (50^{th} percentile) of their peer group over a five-year period.
- Realization of negative incremental value added to portfolio returns for three and five year periods.

SECTION FOUR: MONEY MANAGER INVESTMENT POLICIES AND GUIDELINES

Investment managers shall be subject to the prudent expert rule under the ERISA act, meaning that the investment managers shall invest the portfolio and manage those investments with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Investments shall be consistent with generally accepted investment practices.

Investment managers shall be registered advisors under the Investment Advisors Act of 1940.

All manager(s) must acknowledge, in writing, their obligations as fiduciaries responsible for the investment of fund assets.

Subject to the guidelines included in this Statement, manager shall have full discretion.

The Board has sole discretion to select managers and terminate/replace them when necessary and for any reason.

Managers are prohibited from entering into any transactions for the Fund, which are not authorized by this Policy without the consent of the Board.

Manager(s) are expected to remain fully invested. Investment Managers' cash positions are not to exceed 5% over a ninety- (90) day period without the consent of the board. (This maximum may change from time to time based on Board Action).

The Board will review the present and future cash flow requirements with their Investment Consultant at least annually to respond to any liquidity needs the Fund may have. As such, managers will be required, as needed, to provide cash for the payment of benefit obligations and Plan expenses.

The Board and its Investment Consultant shall continuously review each manager's portfolio performance and execution.

The Board will meet with each manager at least annually, or, when requested, to review fund investment returns and the market environment.

EACH INVESTMENT MANAGER WILL INVEST IN SECURITIES IN ACCORDANCE WITH THE STATE OF GEORGIA INVESTMENT CODE (SEE APPENDIX A) AND USING THE FOLLOWING GUIDELINES FOR EACH ASSET CLASS:

EQUITY SECURITIES

The equity portion of the plan's assets shall be invested in marketable, equity securities. The following policies and acceptable instruments are to be strictly adhered to:

- Investment by any manager in any one stock, in all classes of equity securities, must be limited to 3% of the outstanding capital stock of the corporation.

- Stocks must be of those corporations with market capitalization exceeding $75 million. If the capitalization for corporation held in any equity portfolio drops below $75 million, it will be the responsibility of the investment manager to dispose of such issues within a 90-day period. If prudent disposition of such issues require longer than 90 days, the investment manager must seek approval from the Board in writing.

- Not more that 5% of the total stock portfolio values either at cost or at market may be invested in the common stock of any one corporation.

- Not more than 20% of stock valued at market may be held in any one Global Industry Classification Standard (GICS) industry category.

- The total stock rights and preferred stock held at any time shall not exceed 5% of this aggregate total market value of the portfolio they manage.

FIXED-INCOME SECURITIES

The fixed-income portion of the plan's assets shall be invested in marketable, fixed income securities. The following policies and acceptable instruments are to be strictly adhered to:

- Fund may not own more than 10% of any total issue except for U.S. Treasuries

- Managers may not own more than 20% at market value of debt issues rated BBB in quality by Standard & Poor's.

- Fund may not hold more than 10% at cost of the portfolios in any one issuer's securities other than the U.S. Government.

CASH AND CASH EQUIVALENTS

Cash and cash equivalents are comprised of daily cash balances above day-to-day needs and funds set aside for portfolio strategy reasons.

Short-term investments may be placed in:

- Issues of the U.S. Treasury, federal agencies and federal government sponsored enterprises with maturity of less than two years

- Repurchase agreements immediately collateralized by U.S. Treasury of Federal agency issues at least 102%

- Domestic corporate bonds, debentures and notes rated at least A by Moody's or Standard & Poor's with a maturity of thirty (30) days or less

- Domestic certificates of deposit (CD's) shall be limited to an amount so that the principal and interest will not exceed the $250,000.00 FDIC insurance at each institution. Full collateral (at least 102% of principal) such as U. S. Government Securities will need to be held by our Custodian or an authorized third party for anything in excess of the insured amount. All CDs must be registered in the name of the Fund.

- Domestic short-term investment fund (STIF) selected by the Board

OTHER INVESTMENTS

The Board may authorize the use of any other investment for the Fund provided that such investment is considered prudent for a pension fund, and is not prohibited by applicable statute or law.

The Pension Fund may engage in securities lending with an authorized agent, provided that the securities are fully collateralized (at least 102%) and that the Custodian prior to the release of the securities receives the collateral.

SECTION FIVE: REPORTING REQUIREMENTS

Required reports

Investment managers are required to provide reports to the Board and staff as requested. Reports may include but not be limited to the following:

Daily:	Trading Data
Monthly:	Certification of market value (reconciliation with master custodial bank) Certification of performance results (reconciliation with master custodial bank) Brokerage and third party commissions
Quarterly:	Investment manager's performance Investment manager's status Portfolio characteristics Market outlook (narrative) Soft Dollar – type & firm name Dividend Report
Annual:	Organizational structure Gratuities and contributions Annual filing of form ADV with the Securities & Exchange Commission

WHEN PROFESSIONAL STAFF OR ADMINISTRATIVE STAFF DEPARTS A FIRM, OR THERE IS A CHANGE IN OWNERSHIP, WHICH IS A SERVICE PROVIDER OF THE ATLANTA POLICE OFFICERS PORTFOLIO, EACH TRUSTEE MUST BE NOTIFIED IN WRITTEN FORM WITHIN 72 HOURS.

Reconciliation with Custodian

The trustees understand that from time to time there will be a difference in the performance calculations between the investment manager and the custodial bank. When there is a discrepancy, the Investment managers should reconcile with the Fund's custodian because **only** the custodian's figures will be used to calculate performance by our consultants and pension staff. ***It is the trustees' recommendation that investment managers reconcile with the custodial bank every month***.

Required Meetings

Investment managers are required to meet with the Board, pension staff, and consultants as requested. The investment manager will receive advance notice of all meeting date requests. A listing of topics to be discussed will be provided with the notice. The staff will expect to receive a written summary, which responds to the subjects identified in the noticed least seven days prior to the meeting. These meeting shall have a consistent format designed to make them efficient. Additionally, consistency is required so that the Board can effectively compare and contrast the investment managers articulated portfolio strategy with actual portfolio structure and results. These meetings will also provide the investment managers with the opportunity to explain how their thinking has evolved since previous meetings. During these meetings, the managers will cover the following topics:

- Performance for past period: Standard time periods for each report will be last quarter, year to date, latest one year, three years, five years and since inception. Returns should be annualized and calculated on a time-weighted basis for the total portfolio. All returns should be calculated in accordance with GIPS compliant regulations including income and dividends.

- Rationale for performance results: discussion of the rationale for performance results, relating them specifically to investment strategy and tactical decisions implemented during the current review period.

- Specific strategy for the coming period: discussion of the investment manager’s specific strategy for the portfolio over the next period, with specific reference to asset mix (including cash position) and portfolio characteristics, supported by the investment manager’s capital market and economic assumptions.

- Changes in investment manager’s firm: discussion of any changes in the investment manager’s firm, including client accounts lost or gained.

- Changes in the fund’s requirements: discussion of the Board’s and the fund’s financial status and required modifications to the investment program and strategy, if any.

SECTION SIX: BROKERAGE and SOFT DOLLAR POLICIES

Directed Brokerage Policy (If Applicable)

The Board may designate "soft dollar" or "recapture" broker(s) for purposes of procuring various research services and cash credits from the trading activities of its equity investment managers.

Georgia-Based and Minority-Owned Brokers Policy

Managers are required to report all transactions on the City of Atlanta Police Officers account executed by Georgia-based and/or minority-owned brokers. The names and the firms used must be sent to the Administrative Manager, which should then be sent to each trustee. The consultant should also receive these reports. At the end of each quarter (within 15 days) the manager will be expected to forward a consolidated quarterly report regarding these transactions.

All managers will continue to be subject to the following instructions:

All transactions shall be effected only after determination that the particular purchases or sales are proper for the Account. The above brokerage instructions are not intended to direct or encourage purchase or sale decisions that would not have otherwise been made in the normal course of managing account assets.

Commission Recapture Policy

The Fund has put in place a commission recapture program in order to minimize the effects of transaction costs upon the plan. Where prudent execution dictates, each investment manager is encouraged to direct 30-40% of its trades through the program.

Although the Fund is not subject to Federal retirement plan laws, money managers are expected to comply with the fiduciary duty under ERISA and applicable securities laws to seek to obtain the best price and execution on each trade.

BROKERAGE ACTIVITY REPORTING

The Brokerage activity report must be sent to each trustee, staff, and consultant within 30 days after the end of the each month.

The trustees understand that the fixed income market does not designate commissions in the same fashion as equities. Since the current market does not normally call for brokerage firms to openly report the spread/commission earned for fixed income trades, fixed income managers must do the following:

FIXED INCOME MANAGERS WILL BE REQUIRED TO SUBMIT THE TOTAL DOLLAR AMOUNT (VOLUME) OF TRADES THROUGH MINORITY AND GEORGIA BASED BROKERS IN THE SAME FORMAT AS THE EQUITY MANAGERS.

FOR REPORTING, FIXED INCOME MANAGERS SHOULD SUBSTITUTE VOLUME IN PLACE OF COMMISSIONS AND FOLLOW THE SAME FORMAT AS MENTIONED BELOW.

Manager(s) are expected to construct reports containing the commission dollar amounts directed towards the following:

TOTAL COMMISSION PAID FOR Execution
TOTAL COMMISSION PAID FOR Research
THE NAMES OF ALL OF THE GEORGIA BASED/MINORITY MANAGERS USED

From the total commission paid for execution and research, please break down that total figure according to the following:

Commission Recapture (if the board has established a program)
Minority Directed
Georgia Brokers
Manager Directed (excluding the amounts directed to Georgia based and minority firms)

Manager(s) must send these reports to the consultant and the Administrative Manager, which should then be forwarded to each trustee, each month for review by the board.

SECTION SEVEN: PROXY VOTING PROCEDURES

Policy Statement

In the absence of specific guidelines regarding specific issues, investment managers shall vote proxies in the best economic interest of the fund. This will be in accordance with their fiduciary responsibilities as investment managers and any other applicable state or federal law. Each proxy will be reviewed on a case-by-case basis.

Investment managers are required to furnish the pension staff, consultants and each trustee with quarterly updates on all proxy matters.

Routine Matters

Investment managers may vote with management on most routine matters. A partial list includes:

- Election of directors
- The appointment of auditors.
- Increase in authorized shares
- Charitable, political, or education contributions
- Scheduling of annual meeting
- Limiting personal liability of directors
- Incentive or Stock Option plans
- Name changes
- The business operations in foreign countries.

SOCIAL, ENVIRONMENTAL OR POLITICAL PROPOSALS

The economic interest of the Fund shall be the foremost consideration in the evaluation of these proposals. Managers shall report to the trustees on proxy votes dealing with non-traditional (social, environmental, political, etc.) proposals. The investment managers may tend to vote with management on most of the following issues:

- Limiting or restriction of business in countries as a protest against political practices in those countries.
- Restrictive energy or environmental proposals
- Restrictions on military contracting
- Limitations on the marketing of controversial products

SHAREHOLDERS SOVEREIGNTY

Investment managers shall vote against any proposal that limits shareholder influence on management or adversely affects the potential value received by shareholders. Issues in this category would include:

- Elimination of cumulative voting

- Confidential proxy voting practices

- The issuance of securities contingent on a corporate reorganization which offer special voting rights, are dilutive, or in general are not designed to enhance shareholder value.

- “Poison Pill” or “Golden Parachutes.”

SIGNATURE PAGE

CHAIR (Please Print)	**Signature**	**Date**
______________________	___________________	____________________

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Manager Name (Please Print) acknowledges receipt of the City of Atlanta Police Officers' Pension Fund Statement of Investment Objectives, Policy, and Guidelines (Amended April 12, 2011); and agrees to fully implement and remain compliant with these guidelines per the direction of the Board of Trustees for any and all investments made on behalf of the Fund.

________________________ ________________________ ____________________________

Name (Please Print) **Title** **Signature & Date**

APPENDIX A:

GEORGIA INVESTMENT CODE

O.C.G.A. § 47-20-80

GEORGIA CODE

***** Current through the 2010 Regular Session *****

TITLE 47. RETIREMENT AND PENSIONS
CHAPTER 20. PUBLIC RETIREMENT SYSTEMS STANDARDS
ARTICLE 7. PUBLIC RETIREMENT SYSTEMS INVESTMENT AUTHORITY LAW

O.C.G.A. § 47-20-80 (2010)

§ 47-20-80. Short title

This article shall be known and may be cited as the "Public Retirement Systems Investment Authority Law."

§ 47-20-81. Fund defined; applicability

(a) As used in this article, the term "fund" means the investment fund of any public retirement system or pension system supported wholly or partially from public funds. Such term shall include any pool of such funds for investment purposes.

(b) The provisions of this article shall not apply to political subdivisions which contract with an association of like political subdivisions for the pooling of assets; provided, however, that the provisions of this article shall apply to such association.

§ 47-20-82. Investing funds; eligibility; investment limitation

(a) Funds shall invest in or lend their assets on the security of, and shall hold as invested assets, only eligible investments as prescribed in this article.

(b) Eligibility of an investment shall be determined as of the date of its making or acquisition.

(c) Any investment limitation based upon the amount of the fund's assets shall relate to such assets on the basis of the assets' aggregate historical cost.

§ 47-20-83. Certificated or uncertificated forms of investment; real estate investments

(a) Subject to limitations stated in this article, funds may invest in the following in certificated or uncertificated form:

(1) Corporations or obligations of corporations organized under the laws of this state or any other state or under the laws of Canada, but only if the corporation has a market capitalization equivalent to $100 million; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in corporations or in obligations of corporations organized in a country other than the United States or Canada; provided, further, that such obligation shall be listed as investment grade by a nationally recognized rating agency. For purposes of this paragraph, a corporation organized under the laws of a country other than the United States or Canada shall be deemed to be organized under the laws of this state or another state unless it is a private foreign issuer within the meaning of United States Securities and Exchange Commission Rule 3b-4, 17 C.F.R. Section 240.3b-4, as such appears on July 1, 2007; this will not include any investment with any corporation that is included in the terrorism sanctions issued by the Office of Foreign Assets Control of the United States Department of the Treasury pursuant to Executive Order 13224 signed by the President of the United States on September 23, 2001;

(2) Repurchase and reverse repurchase agreements for direct obligations of the United States government and for obligations unconditionally guaranteed by agencies of the United States government and for investments eligible under paragraph (1) of this subsection;

(3) Cash assets or deposits in checking or savings accounts under certificates of deposit or in other form in banks and trust companies and in savings accounts, certificates of deposit, or similar certificates or evidences of deposits in savings and loan associations and building and loan associations which have qualified for the insurance protection afforded by the Federal Deposit Insurance Corporation;

(4) Bonds, notes, warrants, and other evidence of indebtedness which are direct obligations of the government of the United States of America or for which the full faith and credit of the government of the United States of America is pledged for the payment of principal and interest;

(5) Loans guaranteed as to principal and interest by the government of the United States of America, or by any agency or instrumentality of the government of the United States of America, to the extent of such guaranty;

(6) Taxable bonds, notes, warrants, and other securities not in default which are the direct obligations of any state of the United States or of the District of Columbia, or of the government of Canada or any province of Canada, or for which the full faith and credit of such state, district, government, or province has been pledged for the payment of principal and interest;

(7) Bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided such securities are listed as investment grade by a nationally recognized rating agency;

(8) Bonds, debentures, or other securities issued or insured or guaranteed by any agency, authority, unit, or corporate body created by the government of the United States of America whether or not such obligations are guaranteed by the United States;

(9) Collateralized mortgage obligations that are listed as investment grade by a nationally recognized rating agency;

(10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation;

(11) In addition to those investments eligible under paragraph (1) of this subsection, bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by collateral worth at least 50 percent more than the par value of the entire issue of such obligations, but only if not more than one-third of the total value of the required collateral consists of common stocks;

(12) In addition to those investments eligible under paragraph (1) of this subsection, secured and unsecured obligations of issuers described in paragraph (11) of this subsection other than the obligations described in paragraph (11) of this subsection, bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the fund have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during either of the last two years of the period of such net earnings have been not less than one and one-half times its fixed charges for the year; provided, however, that any such obligation shall be listed as investment grade by a nationally recognized rating agency;

(13) In addition to those investments eligible under paragraph (1) of this subsection, equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, and the right to receive determinated portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

(14) Loans that are secured by pledge or securities eligible for investment under this article;

(15) Purchase money mortgages or like securities received upon the sale or exchange of real property acquired;

(16) In addition to those investments eligible under paragraph (1) of this subsection, a mortgage or a mortgage participation, pass-through, conventional pass-through, trust certificate, or other similar security which represents an undivided, beneficial interest in a pool of loans secured by first mortgages, deeds of trust, or deeds to secure debt upon fee simple, unencumbered, improved, or income-producing real property located in the United States or Canada, which is improved with a residential building or condominium unit or buildings designed for occupancy by not more than four families, including leasehold estates in such real estate if such first mortgages, deeds of trust, or deeds to secure debt are fully guaranteed or insured by the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Federal National Mortgage Association, or any similar governmental entity or instrumentality;

(17) Land and buildings on such land used or acquired for use as a fund's office for the convenient transaction of its own business; provided, however, that portions of such buildings not used for its own business may be rented by the fund to others; provided, further, that the amount invested by a fund in office property shall not exceed 10 percent of the retirement system assets;

(18) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the fund in the course of its business;

(19) Real property acquired in part payment of the consideration on the sale of other real property owned by the fund if such transaction effects a net reduction in the fund's investment in real estate;

(20) Real property acquired by gift or devise, or through merger or consolidation with another fund;

(21) Additional real property and equipment incident to real property if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by the fund under paragraphs (18), (19), and (20) of this subsection; and

(22) Business entities organized under the laws of this state or any other state or under the laws of Canada, but only if the business entity has a minimum market capitalization equivalent to $100 million and if the business entity has elected to be taxed and continues to qualify as a real estate investment trust under Section 856 through Section 860 of the federal Internal Revenue Code, 26 U.S.C. Section 856 through Section 860; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in business entities organized in a country other than the United States or Canada.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the Georgia Municipal Employees Benefit System and any association of like political subdivisions which contracts with its members for the pooling of assets may invest up to 5 percent of the total assets of its fund in real estate; provided, however, that in the event the fund's assets decrease in value, the association shall be entitled to retain all real estate investments if owned prior to the reduction in value of assets; provided, further, that any such association shall be entitled to retain all real estate assets it owned on July 1, 1999, without regard to the limitation imposed by this subsection.

§ 47-20-83.1. (Repealed effective July 1, 2015) Definitions; identification of scrutinized companies where public funds held; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; reporting

(a) As used in this Code section, the term:

(1) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making profit.

(2) "Direct holdings" in a company means all securities of that company that are held directly by

the public fund or in an account or fund in which the public fund owns all shares or interests.

(3) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(4) "Inactive business activities" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(5) "Indirect holdings" in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this Code section.

(6) "Iran" means the Islamic Republic of Iran.

(7) "Petroleum resources" means petroleum or natural gas.

(8) "Public fund" means a large retirement system as defined in Code Section 47-20-84.

(9) "Scrutinized business activities" means business activities that have resulted in a company becoming a scrutinized company.

(10) "Scrutinized company" means any company that has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more in Iran's petroleum sector which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

(11) "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities.

(b) On or before October 1, 2008, each public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings. Such efforts include reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies that have invested more than $20 million in any given year since August 5, 1996, in Iran's petroleum energy sector, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(c) By the first meeting of each board responsible for the management of a public fund after October 1, 2008, the board shall assemble all scrutinized companies that fit the criteria specified in paragraph (10) of subsection (a) of this Code section into a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List."

(d) The board of each public fund shall update and make publicly available annually the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on evolving information from, among other sources, those listed in subsection (b) of this Code section.

(e) Each public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(1) For each company in which the public fund has direct holdings newly identified under subsection (c) of this Code section, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its Iran related activities and encourage the company, within 90 days, to cease its scrutinized business activities or convert such activities to inactive business activities in order to avoid qualifying for divestment by the public fund. Such notice shall be sent no later than December 15, 2008; and

(2) If, within 90 days after the public fund's first engagement with a company pursuant to this subsection, that company announces by public disclosure substantial action specific to Iran, the public fund may maintain its direct holdings, but the company shall remain on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List pending completion of its cessation of scrutinized business activities.

(f) (1) If, after 90 days following a public fund's first engagement with a company pursuant to subsection (e) of this Code section, the company has not announced by public disclosure substantial action specific to Iran, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund within eight months after the expiration of such 90 day period shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings.

(2) If the public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement pursuant to subsection (e) of this Code section has resumed such activities, the public fund shall send a written notice to the company in accordance with subsection (e) and this subsection. The company shall also be immediately reintroduced onto the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(3) The public fund shall monitor the scrutinized company that has announced by public disclosure substantial action specific to Iran and, if, after one year, the public fund determines or becomes aware that the company has not implemented such a plan, within three months after the expiration of such one-year period shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings, and the company also shall be immediately reintroduced onto the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(g) A public fund shall not acquire securities of companies on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(h) Subsections (f) and (g) of this Code section shall not apply to a public fund's indirect holdings. However, the public fund shall submit letters to the managers of such investment funds containing companies on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund devoid of such securities or if such funds are created elsewhere, the board of the public fund shall determine within six months whether to replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this subsection, a private equity fund is deemed to be an actively managed investment fund.

(i) Notwithstanding any other provision of this Code section, the public fund, when discharging its responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering or if such funds are created elsewhere and is deemed by the public fund to be consistent with prudent investor standards, the public fund shall, within six months, consider including such investment offering in the plan.

(j) Each public fund shall file a report with the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List within 30 days after the list is created. This report shall be made available to the public. Annually thereafter the board responsible for the management of a public fund shall file a report, which shall be made available to the public and to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which includes:

(1) A summary of correspondence with companies engaged by the public fund under this Code section;

(2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code section;

(3) All prohibited investments under this Code section;

(4) Any progress made under subsection (h) of this Code section; and

(5) A list of all publicly traded securities held directly by the public fund.

(k) If any of the following occur, this Code section shall be of no further force or effect:

(1) The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons and support international terrorism;

(2) The United States revokes all sanctions imposed against the government of Iran; or

(3) The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this Code section interferes with the conduct of United States foreign policy.

(l) With respect to actions taken in compliance with this Code section, including all good faith determinations regarding companies as required by this Code section, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

(m) Neither the retirement system nor any employee of the retirement system shall be liable for a good faith omission in identifying a scrutinized company.

(n) The state treasurer shall annually prepare a list of scrutinized companies as otherwise required by this Code section. The list shall be made available to each public fund in Georgia and each such fund may rely on said list in meeting the requirements of this Code section.

§ 47-20-84. Large retirement systems

(a) As used in this Code section, the term "large retirement system" means:

(1) Any retirement system created by this title which has an accumulated unfunded actuarial accrued liability not greater than 25 percent of the total of its assets;

(2) The Georgia Municipal Employees Benefit System created by Chapter 5 of this title;

(3) Any association of like political subdivisions which, on, before, or after July 1, 1999, contracts with its members for the pooling of assets;

(4) Any public retirement system other than a retirement system defined in paragraphs (1), (2), and (3) of this subsection which meets the following criteria:

(A) The retirement system has:

(i) An accumulated unfunded actuarial liability not greater than 25 percent of the total of its assets; or

(ii) Assets in excess of $50 million and an accumulated unfunded actuarial liability not greater than 30 percent of the total of its assets;

(B) The retirement system provides a defined benefit plan;

(C) The retirement system investments are managed by one or more independent professional investment managers recognized by the National Association of Securities Dealers and the United States Securities and Exchange Commission and which adhere to the code of ethical standards and conduct of the Association for Investment Management and Research; and

(D) The retirement system investments are limited to those equities of investment grade quality or better, provided that leverage techniques, option techniques, futures, commodities, private placements, and direct participation plans may not be used in making equity investments; and

(5) Any public retirement system which has more than $200 million in assets.

(b) A large retirement system may invest in corporations or in obligations of corporations organized in a country other than the United States or Canada subject to the provisions of paragraph (1) of subsection (a) of Code Section 47-20-83.

(c) A fund shall not invest more than 55 percent of retirement system assets in equities; provided, however, that prior to July 1, 2010, a large retirement system shall invest not more than 65 percent of its assets in equities; on and after July 1, 2010, a large retirement system shall invest not more than 70 percent of its assets in equities; and on and after July 1, 2011, a large retirement system shall invest not more than 75 percent of its assets in equities; provided, further, that no fund shall increase its assets in equities through purchase by more than 20 percent in any fiscal year. Any fund which is not in compliance with the limitations imposed by this subsection shall be granted a two-year period to come into compliance; provided, however, that during such two-year period, the fund shall not increase the percentage of its assets invested in equities.

(d) Subject to all other limitations in this chapter, a large retirement system may invest in securities issued by a unit investment trust or an open-end company:

(1) That is listed on a securities exchange;

(2) The assets of which consist of securities managed so that the fund replicates a listed index or specific market sector;

(3) In which continuous markets are quoted by market makers in the applicable unit investment trust or open-end company; and

(4) That has the capability of creating or redeeming shares as necessary to reflect demand.

(e) A large retirement system may enter into contracts, agreements, and other instruments designed to manage risk exposure.

§ 47-20-85. Compliance

Notwithstanding any provision of the federal Secondary Mortgage Market Enhancement Act, 15 U.S.C. Section 77r-1, to the contrary, any fund subject to the provisions of this article shall comply with all provisions, restrictions, and limitations concerning investments provided in this article.

§ 47-20-86. Enforcement

This article shall be enforced as provided in Article 3 of this chapter.

APPENDIX B:

UNIFORM PRUDENT INVESTOR ACT

UNIFORM PRUDENT INVESTOR ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-THIRD YEAR
IN CHICAGO, ILLINOIS
JULY 29 - AUGUST 5, 1994

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Miami, Florida, February 14, 1995

4/18/95

UNIFORM PRUDENT INVESTOR ACT

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UNIFORM PRUDENT INVESTOR ACT

PREFATORY NOTE

Over the quarter century from the late 1960's the investment practices of fiduciaries experienced significant change. The Uniform Prudent Investor Act (UPIA) undertakes to update trust investment law in recognition of the alterations that have occurred in investment practice. These changes have occurred under the influence of a large and broadly accepted body of empirical and theoretical knowledge about the behavior of capital markets, often described as "modern portfolio theory."

This Act draws upon the revised standards for prudent trust investment promulgated by the American Law Institute in its Restatement (Third) of Trusts: Prudent Investor Rule (1992) [hereinafter Restatement of Trusts 3d: Prudent Investor Rule; also referred to as 1992 Restatement].

Objectives of the Act. UPIA makes five fundamental alterations in the former criteria for prudent investing. All are to be found in the Restatement of Trusts 3d: Prudent Investor Rule.

(1) 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. UPIA § 2(b).

(2) The tradeoff in all investing between risk and return is identified as the fiduciary's central consideration. UPIA § 2(b).

(3) 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. UPIA § 2(e).

(4) The long familiar requirement that fiduciaries diversify their investments has been integrated into the definition of prudent investing. UPIA § 3.

(5) 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. UPIA § 9.

Literature. These changes in trust investment law have been presaged in an extensive body of practical and scholarly writing. See especially the discussion and reporter's notes by Edward C. Halbach, Jr., in Restatement of Trusts 3d: Prudent Investor Rule (1992); see also Edward C. Halbach, Jr., Trust Investment Law in the Third Restatement, 27 Real Property, Probate & Trust J. 407 (1992); Bevis Longstreth, Modern Investment Management and the Prudent Man Rule (1986); Jeffrey N. Gordon, The Puzzling Persistence of the Constrained Prudent Man Rule, 62 N.Y.U.L. Rev. 52 (1987); John H. Langbein & Richard A. Posner, The Revolution in Trust Investment Law, 62 A.B.A.J. 887 (1976); Note, The Regulation of Risky Investments, 83 Harvard L. Rev. 603 (1970). A succinct account of the main findings of modern portfolio theory, written for lawyers, is Jonathan R. Macey, An Introduction to Modern Financial Theory (1991) (American College of Trust & Estate Counsel Foundation). A leading introductory text on modern portfolio theory is R.A. Brealey, An Introduction to Risk and Return from Common Stocks (2d ed. 1983).

Legislation. Most states have legislation governing trust-investment law. This Act promotes uniformity of state law on the basis of the new consensus reflected in the Restatement of Trusts 3d: Prudent Investor Rule. Some states have already acted. California, Delaware, Georgia, Minnesota, Tennessee, and Washington revised their prudent investor legislation to emphasize the total-portfolio standard of care in advance of the 1992 Restatement. These statutes are extracted and discussed in Restatement of Trusts 3d: Prudent Investor Rule § 227, reporter's note, at 60-66 (1992).

Drafters in Illinois in 1991 worked from the April 1990 "Proposed Final Draft" of the Restatement of Trusts 3d: Prudent Investor Rule and enacted legislation that is closely modeled on the new Restatement. 760 ILCS § 5/5 (prudent investing); and § 5/5.1 (delegation) (1992). As the Comments to this Uniform Prudent Investor Act reflect, the Act draws upon the Illinois statute in several sections. Virginia revised its prudent investor act in a similar vein in 1992. Virginia Code § 26-45.1 (prudent investing) (1992). Florida revised its statute in 1993. Florida Laws, ch. 93-257, amending Florida Statutes § 518.11 (prudent investing) and creating § 518.112 (delegation). New York legislation drawing on the new Restatement and on a preliminary version of this Uniform Prudent Investor Act was enacted in 1994. N.Y. Assembly Bill 11683-B, Ch. 609 (1994), adding Estates, Powers and Trusts Law § 11-2.3 (Prudent Investor Act).

Remedies. This Act does not undertake to address issues of remedy law or the computation of damages in trust matters. Remedies are the subject of a reasonably distinct body of doctrine. See generally Restatement (Second) of Trusts §§ 197-226A (1959) [hereinafter cited as Restatement of Trusts 2d; also referred to as 1959 Restatement].

Implications for charitable and pension trusts. This Act is centrally concerned with the investment responsibilities arising under the private gratuitous trust, which is the common vehicle for conditioned wealth transfer within the family. Nevertheless, the prudent investor rule also bears on charitable and pension trusts, among others. "In making investments of trust funds the trustee of a charitable trust is under a duty similar to that of the trustee of a private trust." Restatement of Trusts 2d § 389 (1959). The Employee Retirement Income Security Act (ERISA), the federal regulatory scheme for pension trusts enacted in 1974, absorbs trust-investment law through the prudence standard of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a). The Supreme Court has said: "ERISA's legislative history confirms that the Act's fiduciary responsibility provisions 'codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.'" *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110-11 (1989) (footnote omitted).

Other fiduciary relationships. The Uniform Prudent Investor Act regulates the investment responsibilities of trustees. Other fiduciaries – such as executors, conservators, and guardians of the property – sometimes have responsibilities over assets that are governed by the standards of prudent investment. It will often be appropriate for states to adapt the law governing investment by trustees under this Act to these other fiduciary regimes, taking account of such changed circumstances as the relatively short duration of most executorships and the intensity of court supervision of conservators and guardians in some jurisdictions. The present Act does not undertake to adjust trust-investment law to the special circumstances of the state schemes for administering decedents' estates or conducting the affairs of protected persons.

Although the Uniform Prudent Investor Act by its terms applies to trusts and not to charitable corporations, the standards of the Act can be expected to inform the investment responsibilities of directors and officers of charitable corporations. As the 1992 Restatement observes, "the duties of the members of the governing board of a charitable corporation are generally similar to the duties of the trustee of a charitable trust." Restatement of Trusts 3d: Prudent Investor Rule § 379, Comment *b*, at 190 (1992). See also id. § 389, Comment *b*, at 190-91 (absent contrary statute or other provision, prudent investor rule applies to investment of funds held for charitable corporations).

UNIFORM PRUDENT INVESTOR ACT

SECTION 1. PRUDENT INVESTOR RULE.

(a) Except as otherwise 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 set forth in this [Act].

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

Comment

This section imposes the obligation of prudence in the conduct of investment functions and identifies further sections of the Act that specify the attributes of prudent conduct.

Origins. The prudence standard for trust investing traces back to *Harvard College v. Amory*, 26 Mass. (9 Pick.) 446 (1830). Trustees should "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." Id. at 461.

Prior legislation. The Model Prudent Man Rule Statute (1942), sponsored by the American Bankers Association, undertook to codify the language of the *Amory* case. See Mayo A. Shattuck, The Development of the Prudent Man Rule for Fiduciary Investment in the United States in the Twentieth Century, 12 Ohio State L.J. 491, at 501 (1951); for the text of the model act, which inspired many state statutes, see id. at 508-09. Another prominent codification of the *Amory* standard is Uniform Probate Code § 7-302 (1969), which provides that "the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another . . . ."

Congress has imposed a comparable prudence standard for the administration of pension and employee benefit trusts in the Employee Retirement Income Security Act (ERISA), enacted in 1974. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a), provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims . . . ."

Prior Restatement. The Restatement of Trusts 2d (1959) also tracked the language of the *Amory* case: "In making investments of trust funds the trustee is under a duty to the beneficiary . . . to make such investments and only such investments as a prudent man would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived . . . ." Restatement of Trusts 2d § 227 (1959).

Objective standard. The concept of prudence in the judicial opinions and legislation is essentially relational or comparative. It resembles in this respect the "reasonable person" rule of tort law. A prudent trustee behaves as other trustees similarly situated would behave. The standard is, therefore, objective rather than subjective. Sections 2 through 9 of this Act identify the main factors that bear on prudent investment behavior.

Variation. Almost all of the rules of trust law are default rules, that is, rules that the settlor may alter or abrogate. Subsection (b) carries forward this traditional attribute of trust law. Traditional trust law also allows the beneficiaries of the trust to excuse its performance, when they are all capable and not misinformed. Restatement of Trusts 2d § 216 (1959).

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 purposes, 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 a 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, regularity of income, and 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 of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this [Act].

(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.

Comment

Section 2 is the heart of the Act. Subsections (a), (b), and (c) are patterned loosely on the language of the Restatement of Trusts 3d: Prudent Investor Rule § 227 (1992), and on the 1991 Illinois statute, 760 § ILCS 5/5a (1992). Subsection (f) is derived from Uniform Probate Code § 7-302 (1969).

Objective standard. Subsection (a) of this Act carries forward the relational and objective standard made familiar in the *Amory* case, in earlier prudent investor legislation, and in the Restatements. Early formulations of the prudent person rule were sometimes troubled by the effort to distinguish between the standard of a prudent person investing for another and investing on his or her own account. The language of subsection (a), by relating the trustee's duty to "the purposes, terms, distribution requirements, and other circumstances of the trust," should put such questions to rest. The standard is the standard of the prudent investor similarly situated.

Portfolio standard. Subsection (b) emphasizes the consolidated portfolio standard for evaluating investment decisions. An investment that might be imprudent standing alone can become prudent if undertaken in sensible relation to other trust assets, or to other nontrust assets. In the trust setting the term "portfolio" embraces the entire trust estate.

Risk and return. Subsection (b) also sounds the main theme of modern investment practice, sensitivity to the risk/return curve. See generally the works cited in the Prefatory Note to this Act, under "Literature." Returns correlate strongly with risk, but tolerance for risk varies greatly with the financial and other circumstances of the investor, or in the case of a trust, with the purposes of the trust and the relevant circumstances of the beneficiaries. A trust whose main purpose is to support an elderly widow of modest means will have a lower risk tolerance than a trust to accumulate for a young scion of great wealth.

Subsection (b) of this Act follows Restatement of Trusts 3d: Prudent Investor Rule § 227(a), which provides that the standard of prudent investing "requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust."

Factors affecting investment. Subsection (c) points to certain of the factors that commonly bear on risk/return preferences in fiduciary investing. This listing is nonexclusive. Tax considerations, such as preserving the stepped up basis on death under Internal Revenue Code § 1014 for low-basis assets, have traditionally been exceptionally important in estate planning for affluent persons. Under the present recognition rules of the federal income tax, taxable investors, including trust beneficiaries, are in general best served by an investment strategy that minimizes the taxation incident to portfolio turnover. See generally Robert H. Jeffrey & Robert D. Arnott, Is Your Alpha Big Enough to Cover Its Taxes?, Journal of Portfolio Management 15 (Spring 1993).

Another familiar example of how tax considerations bear upon trust investing: In a regime of pass-through taxation, it may be prudent for the trust to buy lower yielding tax-exempt securities for high-bracket taxpayers, whereas it would ordinarily be imprudent for the trustees of a charitable trust, whose income is tax exempt, to accept the lowered yields associated with tax-exempt securities.

When tax considerations affect beneficiaries differently, the trustee's duty of impartiality requires attention to the competing interests of each of them.

Subsection (c)(8), allowing the trustee to take into account any preferences of the beneficiaries respecting heirlooms or other prized assets, derives from the Illinois act, 760 ILCS § 5/5(a)(4) (1992).

Duty to monitor. Subsections (a) through (d) apply both to investing and managing trust assets. "Managing" embraces monitoring, that is, the trustee's continuing responsibility for oversight of the suitability of investments already made as well as the trustee's decisions respecting new investments.

Duty to investigate. Subsection (d) carries forward the traditional responsibility of the fiduciary investor to examine information likely to bear importantly on the value or the security of an investment – for example, audit reports or records of title. E.g., *Estate of Collins*, 72 Cal. App. 3d 663, 139 Cal. Rptr. 644 (1977) (trustees lent on a junior mortgage on unimproved real estate, failed to have land appraised, and accepted an unaudited financial statement; held liable for losses).

Abrogating categoric restrictions. Subsection 2(e) clarifies that no particular kind of property or type of investment is inherently imprudent. Traditional trust law was encumbered with a variety of categoric exclusions, such as prohibitions on junior mortgages or new ventures. In some states legislation created so-called "legal lists" of approved trust investments. The universe of investment products changes incessantly. Investments that were at one time thought too risky, such as equities, or more recently, futures, are now used in fiduciary portfolios. By contrast, the investment that was at one time thought ideal for trusts, the long-term bond, has been discovered to import a level of risk and volatility – in this case, inflation risk – that had not been anticipated. Accordingly, section 2(e) of this Act follows Restatement of Trusts 3d: Prudent Investor Rule in abrogating categoric restrictions. The Restatement says: "Specific investments or techniques are not per se prudent or imprudent. The riskiness of a specific property, and thus the propriety of its inclusion in the trust estate, is not judged in the abstract but in terms of its anticipated effect on the particular trust's portfolio." Restatement of Trusts 3d: Prudent Investor Rule § 227, Comment f, at 24 (1992). The premise of subsection 2(e) is that trust beneficiaries are better protected by the Act's emphasis on close attention to risk/return objectives as prescribed in subsection 2(b) than in attempts to identify categories of investment that are per se prudent or imprudent.

The Act impliedly disavows the emphasis in older law on avoiding "speculative" or "risky" investments. Low levels of risk may be appropriate in some trust settings but inappropriate in others. It is the trustee's task to invest at a risk level that is suitable to the purposes of the trust.

The abolition of categoric restrictions against types of investment in no way alters the trustee's conventional duty of loyalty, which is reiterated for the purposes of this Act in Section 5. For example, were the trustee to invest in a second mortgage on a piece of real property owned by the trustee, the investment would be wrongful on account of the trustee's breach of the duty to abstain from self-dealing, even though the investment would no longer automatically offend the former categoric restriction against fiduciary investments in junior mortgages.

Professional fiduciaries. The distinction taken in subsection (f) between amateur and professional trustees is familiar law. The prudent investor standard applies to a range of fiduciaries, from the most sophisticated professional investment management firms and corporate fiduciaries, to family members of minimal experience. Because the standard of prudence is relational, it follows that the standard for professional trustees is the standard of prudent professionals; for amateurs, it is the standard of prudent amateurs. Restatement of Trusts 2d § 174 (1959) provides: "The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill." Case law strongly supports the concept of the higher standard of care for the trustee representing itself to be expert or professional. See Annot., Standard of Care Required of Trustee Representing Itself to Have Expert Knowledge or Skill, 91 A.L.R. 3d 904 (1979) & 1992 Supp. at 48-49.

The Drafting Committee declined the suggestion that the Act should create an exception to the prudent investor rule (or to the diversification requirement of Section 3) in the case of smaller trusts. The Committee believes that subsections (b) and (c) of the Act emphasize factors that are sensitive to the traits of small trusts; and that subsection (f) adjusts helpfully for the distinction between professional and amateur trusteeship. Furthermore, it is always open to the settlor of a trust under Section 1(b) of the Act to reduce the trustee's standard of care if the settlor deems such a step appropriate. The official comments to the 1992 Restatement observe that pooled investments, such as mutual funds and bank common trust funds, are especially suitable for small trusts. Restatement of Trusts 3d: Prudent Investor Rule § 227, Comments *h*, *m*, at 28, 51; reporter's note to Comment *g*, id. at 83.

Matters of proof. Although virtually all express trusts are created by written instrument, oral trusts are known, and accordingly, this Act presupposes no formal requirement that trust terms be in writing. When there is a written trust instrument, modern authority strongly favors allowing evidence extrinsic to the instrument to be consulted for the purpose of ascertaining the settlor's intent. See Uniform Probate Code § 2-601 (1990), Comment; Restatement (Third) of Property: Donative Transfers (Preliminary Draft No. 2, ch. 11, Sept. 11, 1992).

SECTION 3. DIVERSIFICATION. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Comment

The language of this section derives from Restatement of Trusts 2d § 228 (1959). ERISA insists upon a comparable rule for pension trusts. ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). Case law overwhelmingly supports the duty to diversify. See Annot., Duty of Trustee to Diversify Investments, and Liability for Failure to Do So, 24 A.L.R. 3d 730 (1969) & 1992 Supp. at 78-79.

The 1992 Restatement of Trusts takes the significant step of integrating the diversification requirement into the concept of prudent investing. Section 227(b) of the 1992 Restatement treats diversification as one of the fundamental elements of prudent investing, replacing the separate section 228 of the Restatement of Trusts 2d. The message of the 1992 Restatement, carried forward in Section 3 of this Act, is that prudent investing ordinarily requires diversification.

Circumstances can, however, overcome the duty to diversify. For example, if a tax-sensitive trust owns an underdiversified block of low-basis securities, the tax costs of recognizing the gain may outweigh the advantages of diversifying the holding. The wish to retain a family business is another situation in which the purposes of the trust sometimes override the conventional duty to diversify.

Rationale for diversification. "Diversification reduces risk . . . [because] stock price movements are not uniform. They are imperfectly correlated. This means that if one holds a well diversified portfolio, the gains in one investment will cancel out the losses in another." Jonathan R. Macey, An Introduction to Modern Financial Theory 20 (American College of Trust and Estate Counsel Foundation, 1991). For example, during the Arab oil embargo of 1973, international oil stocks suffered declines, but the shares of domestic oil producers and coal companies benefitted. Holding a broad enough portfolio allowed the investor to set off, to some extent, the losses associated with the embargo.

Modern portfolio theory divides risk into the categories of “compensated” and “uncompensated” risk. The risk of owning shares in a mature and well-managed company in a settled industry is less than the risk of owning shares in a start-up high-technology venture. The investor requires a higher expected return to induce the investor to bear the greater risk of disappointment associated with the start-up firm. This is compensated risk – the firm pays the investor for bearing the risk. By contrast, nobody pays the investor for owning too few stocks. The investor who owned only international oils in 1973 was running a risk that could have been reduced by having configured the portfolio differently – to include investments in different industries. This is uncompensated risk – nobody pays the investor for owning shares in too few industries and too few companies. Risk that can be eliminated by adding different stocks (or bonds) is uncompensated risk. The object of diversification is to minimize this uncompensated risk of having too few investments. “As long as stock prices do not move exactly together, the risk of a diversified portfolio will be less than the average risk of the separate holdings.” R.A. Brealey, An Introduction to Risk and Return from Common Stocks 103 (2d ed. 1983).

There is no automatic rule for identifying how much diversification is enough. The 1992 Restatement says: “Significant diversification advantages can be achieved with a small number of well-selected securities representing different industries . . . . Broader diversification is usually to be preferred in trust investing,” and pooled investment vehicles “make thorough diversification practical for most trustees.” Restatement of Trusts 3d: Prudent Investor Rule § 227, General Note on Comments *e-h*, at 77 (1992). See also Macey, supra, at 23-24; Brealey, supra, at 111-13.

Diversifying by pooling. It is difficult for a small trust fund to diversify thoroughly by constructing its own portfolio of individually selected investments. Transaction costs such as the round-lot (100 share) trading economies make it relatively expensive for a small investor to assemble a broad enough portfolio to minimize uncompensated risk. For this reason, pooled investment vehicles have become the main mechanism for facilitating diversification for the investment needs of smaller trusts.

Most states have legislation authorizing common trust funds; see 3 Austin W. Scott & William F. Fratcher, The Law of Trusts § 227.9, at 463-65 n.26 (4th ed. 1988) (collecting citations to state statutes). As of 1992, 35 states and the District of Columbia had enacted the Uniform Common Trust Fund Act (UCTFA) (1938), overcoming the rule against commingling trust assets and expressly enabling banks and trust companies to establish common trust funds. 7 Uniform Laws Ann. 1992 Supp. at 130 (schedule of adopting states). The Prefatory Note to the UCTFA explains: “The purposes of such a common or joint investment fund are to diversify the investment of the several trusts and thus spread the risk of loss, and to make it easy to invest any amount of trust funds quickly and with a small amount of trouble." 7 Uniform Laws Ann. 402 (1985).

Fiduciary investing in mutual funds. Trusts can also achieve diversification by investing in mutual funds. See Restatement of Trusts 3d: Prudent Investor Rule, § 227, Comment *m*, at 99-100 (1992) (endorsing trust investment in mutual funds). ERISA § 401(b)(1), 29 U.S.C. § 1101(b)(1), expressly authorizes pension trusts to invest in mutual funds, identified as securities "issued by an investment company registered under the Investment Company Act of 1940 . . . ."

SECTION 4. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this [Act].

Comment

Section 4, requiring the trustee to dispose of unsuitable assets within a reasonable time, is old law, codified in Restatement of Trusts 3d: Prudent Investor Rule § 229 (1992), lightly revising Restatement of Trusts 2d § 230 (1959). The duty extends as well to investments that were proper when purchased but subsequently become improper. Restatement of Trusts 2d § 231 (1959). The same standards apply to successor trustees, see Restatement of Trusts 2d § 196 (1959).

The question of what period of time is reasonable turns on the totality of factors affecting the asset and the trust. The 1959 Restatement took the view that "[o]rdinarily any time within a year is reasonable, but under some circumstances a year may be too long a time and under other circumstances a trustee is not liable although he fails to effect the conversion for more than a year." Restatement of Trusts 2d § 230, comment *b* (1959). The 1992 Restatement retreated from this rule of thumb, saying, "No positive rule can be stated with respect to what constitutes a reasonable time for the sale or exchange of securities." Restatement of Trusts 3d: Prudent Investor Rule § 229, comment *b* (1992).

The criteria and circumstances identified in Section 2 of this Act as bearing upon the prudence of decisions to invest and manage trust assets also pertain to the prudence of decisions to retain or dispose of inception assets under this section.

SECTION 5. LOYALTY. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Comment

The duty of loyalty is perhaps the most characteristic rule of trust law, requiring the trustee to act exclusively for the beneficiaries, as opposed to acting for the trustee's own interest or that of third parties. The language of Section 4 of this Act derives from Restatement of Trusts 3d: Prudent Investor Rule § 170 (1992), which makes minute changes in Restatement of Trusts 2d § 170 (1959).

The concept that the duty of prudence in trust administration, especially in investing and managing trust assets, entails adherence to the duty of loyalty is familiar. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), extracted in the Comment to Section 1 of this Act, effectively merges the requirements of prudence and loyalty. A fiduciary cannot be prudent in the conduct of investment functions if the fiduciary is sacrificing the interests of the beneficiaries.

The duty of loyalty is not limited to settings entailing self-dealing or conflict of interest in which the trustee would benefit personally from the trust. "The trustee is under a duty to the beneficiary in administering the trust not to be guided by the interest of any third person. Thus, it is improper for the trustee to sell trust property to a third person for the purpose of benefitting the third person rather than the trust." Restatement of Trusts 2d § 170, comment *q*, at 371 (1959).

No form of so-called "social investing" is consistent with the duty of loyalty if the investment activity entails sacrificing the interests of trust beneficiaries – for example, by accepting below-market returns – in favor of the interests of the persons supposedly benefitted by pursuing the particular social cause. See, e.g., John H. Langbein & Richard Posner, Social Investing and the Law of Trusts, 79 Michigan L. Rev. 72, 96-97 (1980) (collecting authority). For pension trust assets, see generally Ian D. Lanoff, The Social Investment of Private Pension Plan Assets: May it Be Done Lawfully under ERISA?, 31 Labor L.J. 387 (1980). Commentators supporting social investing tend to concede the overriding force of the duty of loyalty. They argue instead that particular schemes of social investing may not result in below-market returns. See, e.g., Marcia O'Brien Hylton, "Socially Responsible" Investing: Doing Good Versus Doing Well in an Inefficient Market, 42 American U.L. Rev. 1 (1992). In 1994 the Department of Labor issued an Interpretive Bulletin reviewing its prior analysis of social investing questions and reiterating that pension trust fiduciaries may invest only in conformity with the prudence and loyalty standards of ERISA §§ 403-404. Interpretive Bulletin 94-1, 59 Fed. Regis. 32606 (Jun. 22, 1994), to be codified as 29 CFR § 2509.94-1. The Bulletin reminds fiduciary investors that they are prohibited from "subordinat[ing] the interests of participants and beneficiaries in their retirement income to unrelated objectives."

SECTION 6. IMPARTIALITY. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Comment

The duty of impartiality derives from the duty of loyalty. When the trustee owes duties to more than one beneficiary, loyalty requires the trustee to respect the interests of all the beneficiaries. Prudence in investing and administration requires the trustee to take account of the interests of all the beneficiaries for whom the trustee is acting, especially the conflicts between the interests of beneficiaries interested in income and those interested in principal.

The language of Section 6 derives from Restatement of Trusts 2d § 183 (1959); see also id., § 232. Multiple beneficiaries may be beneficiaries in succession (such as life and remainder interests) or beneficiaries with simultaneous interests (as when the income interest in a trust is being divided among several beneficiaries).

The trustee's duty of impartiality commonly affects the conduct of investment and management functions in the sphere of principal and income allocations. This Act prescribes no regime for allocating receipts and expenses. The details of such allocations are commonly handled under specialized legislation, such as the Revised Uniform Principal and Income Act (1962) (which is presently under study by the Uniform Law Commission with a view toward further revision).

SECTION 7. INVESTMENT COSTS. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Comment

Wasting beneficiaries' money is imprudent. In devising and implementing strategies for the investment and management of trust assets, trustees are obliged to minimize costs.

The language of Section 7 derives from Restatement of Trusts 2d § 188 (1959). The Restatement of Trusts 3d says: "Concerns over compensation and other charges are not an obstacle to a reasonable course of action using mutual funds and other pooling arrangements, but they do require special attention by a trustee. . . . [I]t is important for trustees to make careful cost comparisons, particularly among similar products of a specific type being considered for a trust portfolio." Restatement of Trusts 3d: Prudent Investor Rule § 227, comment *m*, at 58 (1992).

SECTION 8. REVIEWING COMPLIANCE. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Comment

This section derives from the 1991 Illinois act, 760 ILCS 5/5(a)(2) (1992), which draws upon Restatement of Trusts 3d: Prudent Investor Rule § 227, comment *b*, at 11 (1992). Trustees are not insurers. Not every investment or management decision will turn out in the light of hindsight to have been successful. Hindsight is not the relevant standard. In the language of law and economics, the standard is ex ante, not ex post.

SECTION 9. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.

(a) 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:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) 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.

(c) 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.

(d) 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.

Comment

This section of the Act reverses the much-criticized rule that forbad trustees to delegate investment and management functions. The language of this section is derived from Restatement of Trusts 3d: Prudent Investor Rule § 171 (1992), discussed infra, and from the 1991 Illinois act, 760 ILCS § 5/5.1(b), (c) (1992).

Former law. The former nondelegation rule survived into the 1959 Restatement: "The trustee is under a duty to the beneficiary not to delegate to others the doing of acts which the trustee can reasonably be required personally to perform." The rule put a premium on the frequently arbitrary task of distinguishing discretionary functions that were thought to be nondelegable from supposedly ministerial functions that the trustee was allowed to delegate. Restatement of Trusts 2d § 171 (1959).

The Restatement of Trusts 2d admitted in a comment that "There is not a clear-cut line dividing the acts which a trustee can properly delegate from those which he cannot properly delegate." Instead, the comment directed attention to a list of factors that "may be of importance: (1) the amount of discretion involved; (2) the value and character of the property involved; (3) whether the property is principal or income; (4) the proximity or remoteness of the subject matter of the trust; (5) the character of the act as one involving professional skill or facilities possessed or not possessed by the trustee himself." Restatement of Trusts 2d § 171, comment *d* (1959). The 1959 Restatement further said: "A trustee cannot properly delegate to another power to select investments." Restatement of Trusts 2d § 171, comment *h* (1959).

For discussion and criticism of the former rule see William L. Cary & Craig B. Bright, The Delegation of Investment Responsibility for Endowment Funds, 74 Columbia L. Rev. 207 (1974); John H. Langbein & Richard A. Posner, Market Funds and Trust-Investment Law, 1976 American Bar Foundation Research J. 1, 18-24.

The modern trend to favor delegation. The trend of subsequent legislation, culminating in the Restatement of Trusts 3d: Prudent Investor Rule, has been strongly hostile to the nondelegation rule. See John H. Langbein, Reversing the Nondelegation Rule of Trust-Investment Law, 59 Missouri L. Rev. 105 (1994).

The delegation rule of the Uniform Trustee Powers Act. The Uniform Trustee Powers Act (1964) effectively abrogates the nondelegation rule. It authorizes trustees "to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary . . . ." Uniform Trustee Powers Act § 3(24), 7B Uniform Laws Ann. 743 (1985). The Act has been enacted in 16 states, see "Record of Passage of Uniform and Model Acts as of September 30, 1993," 1993-94 Reference Book of Uniform Law Commissioners (unpaginated, following page 111) (1993).

UMIFA's delegation rule. The Uniform Management of Institutional Funds Act (1972) (UMIFA), authorizes the governing boards of eleemosynary institutions, who are trustee-like fiduciaries, to delegate investment matters either to a committee of the board or to outside investment advisors, investment counsel, managers, banks, or trust companies. UMIFA § 5, 7A Uniform Laws Ann. 705 (1985). UMIFA has been enacted in 38 states, see "Record of Passage of Uniform and Model Acts as of September 30, 1993," 1993-94 Reference Book of Uniform Law Commissioners (unpaginated, following page 111) (1993).

ERISA's delegation rule. The Employee Retirement Income Security Act of 1974, the federal statute that prescribes fiduciary standards for investing the assets of pension and employee benefit plans, allows a pension or employee benefit plan to provide that "authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers . . . ." ERISA § 403(a)(2), 29 U.S.C. § 1103(a)(2). Commentators have explained the rationale for ERISA's encouragement of delegation:

> ERISA . . . invites the dissolution of unitary trusteeship. . . . ERISA's fractionation of traditional trusteeship reflects the complexity of the modern pension trust. Because millions, even billions of dollars can be involved, great care is required in investing and safekeeping plan assets. Administering such plans–computing and honoring benefit entitlements across decades of employment and retirement–is also a complex business. . . . Since, however, neither the sponsor nor any other single entity has a comparative advantage in performing all these functions, the tendency has been for pension plans to use a variety of specialized providers. A consulting actuary, a plan administration firm, or an insurance company may oversee the design of a plan and arrange for processing benefit claims. Investment industry professionals manage the portfolio (the largest plans spread their pension investments among dozens of money management firms).

John H. Langbein & Bruce A. Wolk, Pension and Employee Benefit Law 496 (1990).

The delegation rule of the 1992 Restatement. The Restatement of Trusts 3d: Prudent Investor Rule (1992) repeals the nondelegation rule of Restatement of Trusts 2d § 171 (1959), extracted supra, and replaces it with substitute text that reads:

> § 171. Duty with Respect to Delegation. A trustee has a duty personally to perform the responsibilities of trusteeship except as a prudent person might delegate those responsibilities to others. In deciding whether, to whom, and in what manner to delegate fiduciary authority in the administration of a trust, and thereafter in supervising agents, the trustee is under a duty to the beneficiaries to exercise fiduciary discretion and to act as a prudent person would act in similar circumstances.

Restatement of Trusts 3d: Prudent Investor Rule § 171 (1992). The 1992 Restatement integrates this delegation standard into the prudent investor rule of section 227, providing that "the trustee must . . . act with prudence in deciding whether and how to delegate to others . . . ." Restatement of Trusts 3d: Prudent Investor Rule § 227(c) (1992).

Protecting the beneficiary against unreasonable delegation. There is an intrinsic tension in trust law between granting trustees broad powers that facilitate flexible and efficient trust administration, on the one hand, and protecting trust beneficiaries from the misuse of such powers on the other hand. A broad set of trustees' powers, such as those found in most lawyer-drafted instruments and exemplified in the Uniform Trustees' Powers Act, permits the trustee to act vigorously and expeditiously to maximize the interests of the beneficiaries in a variety of transactions and administrative settings. Trust law relies upon the duties of loyalty and prudent administration, and upon procedural safeguards such as periodic accounting and the availability of judicial oversight, to prevent the misuse of these powers. Delegation, which is a species of trustee power, raises the same tension. If the trustee delegates effectively, the beneficiaries obtain the advantage of the agent's specialized investment skills or whatever other attributes induced the trustee to delegate. But if the trustee delegates to a knave or an incompetent, the delegation can work harm upon the beneficiaries.

Section 9 of the Uniform Prudent Investor Act is designed to strike the appropriate balance between the advantages and the hazards of delegation. Section 9 authorizes delegation under the limitations of subsections (a) and (b). Section 9(a) imposes duties of care, skill, and caution on the trustee in selecting the agent, in establishing the terms of the delegation, and in reviewing the agent's compliance.

The trustee's duties of care, skill, and caution in framing the terms of the delegation should protect the beneficiary against overbroad delegation. For example, a trustee could not prudently agree to an investment management agreement containing an exculpation clause that leaves the trust without recourse against reckless mismanagement. Leaving one's beneficiaries remediless against willful wrongdoing is inconsistent with the duty to use care and caution in formulating the terms of the delegation. This sense that it is imprudent to expose beneficiaries to broad exculpation clauses underlies both federal and state legislation restricting exculpation clauses, e.g., ERISA §§ 404(a)(1)(D), 410(a), 29 U.S.C. §§ 1104(a)(1)(D), 1110(a); New York Est. Powers Trusts Law § 11-1.7 (McKinney 1967).

Although subsection (c) of the Act exonerates the trustee from personal responsibility for the agent's conduct when the delegation satisfies the standards of subsection 9(a), subsection 9(b) makes the agent responsible to the trust. The beneficiaries of the trust can, therefore, rely upon the trustee to enforce the terms of the delegation.

Costs. The duty to minimize costs that is articulated in Section 7 of this Act applies to delegation as well as to other aspects of fiduciary investing. In deciding whether to delegate, the trustee must balance the projected benefits against the likely costs. Similarly, in deciding how to delegate, the trustee must take costs into account. The trustee must be alert to protect the beneficiary from "double dipping." If, for example, the trustee's regular compensation schedule presupposes that the trustee will conduct the investment management function, it should ordinarily follow that the trustee will lower its fee when delegating the investment function to an outside manager.

SECTION 10. LANGUAGE INVOKING STANDARD OF [ACT]. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this [Act]: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons 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 income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Comment

This provision is taken from the Illinois act, 760 ILCS § 5/5(d) (1992), and is meant to facilitate incorporation of the Act by means of the formulaic language commonly used in trust instruments.

SECTION 11. APPLICATION TO EXISTING TRUSTS. This [Act] applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this [Act] governs only decisions or actions occurring after that date.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among the States enacting it.

SECTION 13. SHORT TITLE. This [Act] may be cited as the "[Name of Enacting State] Uniform Prudent Investor Act."

SECTION 14. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 15. EFFECTIVE DATE. This [Act] takes effect . . . .

SECTION 16. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)