

INDEPENDENT THINKING

THE NEW STANDARD IN WEALTH MANAGEMENT



EVERCORE
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A Message from the CEO



Welcome to the new edition of *Independent Thinking*.

Some portfolio risks are unforeseeable, some are barely discernable – and some are strikingly obvious. In this issue, we take a hard look at two of today's biggest headline risks: rising inflation and rising taxes. Inflation has spiked in recent weeks, up 5% since last year as measured by the Consumer Price Index, and the Biden Administration is planning a \$1 trillion+ net tax hike.

It remains to be seen just how much these developments will come to matter to investors. We have views on the potential impact of each, as you'll read in the cover article on inflation by John Apruzzese and the tax planning article on page 11 by Helena Jonassen. But the bigger, more opaque risk for any investor is losing sight of long-term goals in a rush to react to current events. Disciplined portfolio diversification and thoughtful, ongoing planning rarely make news, but they are almost always the keys to long-term success, as well as some of the most effective risk management tools.

On a brighter note, we welcome Alex Lyden-Horn to our team, as Director of Delaware Trust Services and Trust Counsel for Evercore Trust Company, N.A. Our national trust bank, headquartered in Wilmington, Delaware, and with trust powers in every state, is an enormous asset for our firm, allowing our Wealth and Fiduciary Advisors across the country to advise on the specific and often complex fiduciary needs of our U.S.-based client families (and international families with U.S. interests), working closely with their other trusted legal and

tax advisors. Alex's debut Evercore article on page 14 considers directed trusts for complex families with specific wealth-planning needs, a complement to Jeff Maurer's review on page 17 of a more traditional trust structure in the broader context of intergenerational family wealth planning.

Also in this issue is a thoughtful article by Brian Pollak on the potential merits and pitfalls of ESG investing, a topic much on the minds of many of our clients. It's an increasingly important area of wealth management and one that we expect to address regularly in this publication.

On another, more personal note, I am writing this on a beautiful late spring day at our Manhattan headquarters, and I am delighted to be back. Every day more and more of our colleagues reassemble, here and soon at our other offices, a moving experience after so long physically apart. Many have remarked on how quickly any initial feeling of strangeness wears off and how happy they are to see their favorite local businesses up and running; a return to the small but important

human connections that can make life so rich.

I am sure that some of the changes of the past year and a half will be permanent, such as a wider variety of communication channels, with our clients and with each other, and streamlined electronic processes – but there's no substitute for an elbow bump and in-person conversation.

I hope that you enjoy the articles in these pages, and that you and your family are looking forward to a happy and healthy summer.

A handwritten signature in cursive script, appearing to read "Chris".

Chris Zander
President & Chief Executive Officer

Who's Afraid of Inflation?

By John Apruzzese

Investors are right to fear rising inflation: It erodes real capital returns. But much of the market and media chatter around a resurgence of inflation after an almost 40-year lull misses a few key points that add up to one big point: The 2020s are nothing like the 1970s.

First and most important, productivity is accelerating. Productivity growth stalled in the 1970s due to low levels of innovation and the wave of Baby

Boomers entering the workforce. Today, it's growing at a rate of about 4% a year, as illustrated by the chart below, helping to neutralize the impact of

Editor's note: Evercore Wealth Management hosted an investment webinar on June 22 focusing on the prospects for – and potential impact of – rising inflation on portfolios, in addition to the firm's current market outlook. Please contact your advisor for replay details.

rising wages and other input prices, and allowing companies to maintain or even cut prices.

Real Output Per Hour of All Persons

Percent change year over year



Source: Federal Reserve Economic Data – March 31, 2021.

Investors are right to fear rising inflation: It erodes real capital returns.



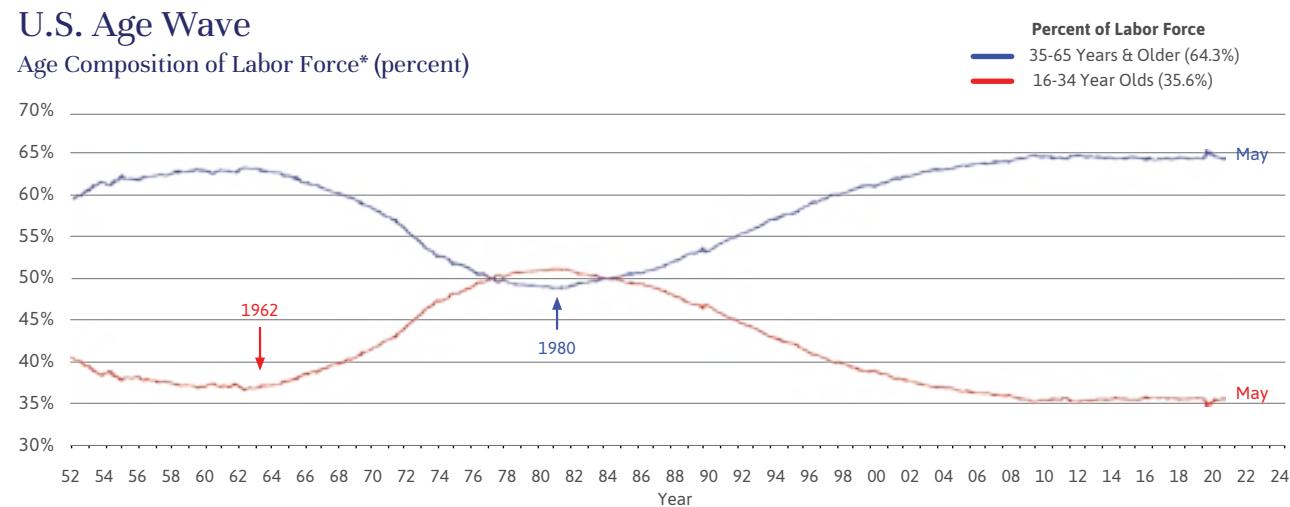
Think of the time we are saving, as the pandemic forced consumers and companies to embrace digitalization more quickly than anyone could have expected.

Mobile banking, scanning and electronic signatures have relegated paper processes to the history tablets; doctors are communicating more efficiently with their

patients and colleagues; and big business is exploiting big data to drive more efficient inventory management, product design and delivery.

U.S. Age Wave

Age Composition of Labor Force* (percent)



Source: Bureau of Labor Statistics.

* Oldest and youngest Baby Boomers turned 16 in 1962 and 1980, respectively.

Innovation propels further, faster innovation. New software code is written on top of previous code to achieve ever greater user-friendliness and new capabilities. System engineers are in turn continually increasing the productivity of software coders, which further compounds the productivity potential of the entire system.

5 %

Consumer prices rose at the fastest rate in May since 2008.

Second, the U.S. dollar is reasonably stable, a far cry from the extreme volatility and 29% overall drop in the currency's value in the 1970s, a decade marked by the abandonment of the gold standard, price controls, and the oil crises of 1973 and 1979. U.S. government deficits are high now, but so are those of most other developed countries, leaving the dollar reasonably secure as the global reserve currency. A stable dollar keeps the prices of imported goods from pressing the inflation rate higher.

Third, the demographic trends are now almost the opposite of the 1970s, as illustrated by the chart on page 3. The average age of workers is increasing as skilled Baby Boomers delay retirement in anticipation of longer, healthier lives. Experienced workers are more productive and do not increase spending as quickly as younger workers forming households.

But what about all the current headlines on inflation, up 5% at the CPI's last count? There is good

reason to think that this current burst is a temporary consequence of the pandemic. Both wages and prices may prove more stable than they look at present. Any inflation number looks dramatic in comparison with the spring and summer of 2020 when the economy was at a near standstill. And supply disruptions caused by the rapid shutdown of businesses and management misjudgments about how rapidly the economy would improve will be ironed out over the rest of the year. For example, the current extreme shortages of lumber will be addressed as construction projects are delayed and sawmill capacity is increased. Finally, wage pressure exacerbated by unemployment benefits will ease when the benefits dry up in the next few months.

We expect inflation to return to a sub 3% growth rate.

On balance, we expect inflation to return to a sub 3% growth rate by next year and productivity to continue growing at an annual clip of 4% or more. That will protect consumers' purchasing power and support stock valuations. But we are mindful of the risks, notably that the Federal Reserve could keep interest rates low for too long and productivity could encounter some yet unforeseen challenges. We will continue to balance portfolios between investments that do well during periods of accelerating inflation, such as real estate and businesses that have hard assets and pricing power, and assets that benefit from a return to low and stable inflations, such as various fixed income instruments.

The 2020s are not the 1970s. But some things don't change. Now is always the hardest time to invest, and thoughtful asset allocation to diversified portfolios remains the best way to protect and grow investment portfolios.

John Apruzzese is the Chief Investment Officer of Evercore Wealth Management. He can be contacted at apruzzese@evercore.com.

Sustainable Investing: What's it to You?

By Brian Pollak

Investors who care about sustainable investing often care very deeply, as a way to express their individual values and drive change. For something so personal, there can be no one right approach, no single lens. Portfolios should reflect the interests of the people they serve – and ideally at no cost to performance.

The Sustainable Funds Universe

A Nearly Fourfold Increase in the Past Decade



Source: Morningstar Direct. Data as of 12/31/2020. Note: Includes funds that have been liquidated during this period.

On the surface, it seems as if any and every interest can be expressed in this marketplace. There are now about 400 so-called sustainable mutual funds and exchange traded funds, or ETFs, in the United States alone, up fourfold in just over 10 years (see chart on page 5).¹ In 2020 alone, over \$50 billion in net capital flowed into these investment vehicles. And these numbers appear likely to grow. The Federal Reserve and the Biden Administration have stated explicitly that climate change

Many large investors are pressuring investors and corporations to make a more significant ESG commitment.

and a transition to a more sustainable economy are important economic policy tenets. Corporate boards and CEOs are not far behind, with increasingly frequent references to corporate ESG policies and disclosures. And many large investors, notably BlackRock, the world's largest asset management firm, are pressuring investors and corporations alike to make a more significant commitment to advancing ESG concerns.

But choice can, as any consumer knows, breed confusion. Portfolios and the indices they benchmark against are often tilted toward certain environmental, social and governance, or ESG, factors, such as avoiding exposure to high levels of carbon emissions or the use of child labor, and tilting exposure toward board or C-suite diversity or good corporate governance. While the approaches afford investors more opportunity for customization, the individual

E, S and G elements can be perceived differently and don't necessarily work well together in evaluating exposures. (See the box on page 8 for a guide to these terms.) Focusing on broad ESG indices as benchmarks can also cause investors to lose sight of the whole and lead to surprising outcomes, such as the inclusion of oil producers or handgun manufacturers in so-called sustainable funds or other unanticipated exposures.

Consider Facebook, Inc., which for several reasons is not a priority holding in our core equity strategy, but is often referenced by other investors as an ESG-friendly holding. According to data from Refinitiv Financial Solutions, Facebook's overall ESG score is a B- as of this writing, with an A grade in resource usage mitigating lower grades in governance and social pillars. But when data around privacy and competition controversies are factored in, Facebook's combined score falls all the way to C-. These controversies are not factored into the traditional ESG scoring methodology, but their presence creates valid potential risks to the company's sustainability. Any rational analysis of Facebook as an ESG investment should consider the complicated relationships among these risks.

Adding to this confusion is the ever-expanding range of sustainable investing strategies that are thematic in nature, prioritizing specific sectors or ESG factors, such as funds and indices that focus on areas such as renewable energy, Catholic values or gender equality. The underlying investments in these different strategies can vary wildly, in both how the portfolios are tilted and what sectors may be excluded.

With all this new capital and fund formation, potential problems are cropping up more frequently.

While sustainable funds generally have lower ESG risk than the broad fund universe and vote in favor of key ESG shareholder resolutions, Morningstar notes that support of such measures varies widely. That may be an understatement. The SEC recently issued a risk alert examining the policies and procedures of firms claiming to engage in ESG investing, observing instances of potentially misleading statements around portfolio management, proxy voting, and marketing and disclosure practices – in a word, greenwashing.

The European Union, always a few steps ahead of the United States and other countries in sustainable investing, recently implemented anti-greenwashing investment legislation requiring money management firms with over 500 employees to state whether they are reviewing the impact of their investments based on 18 different ESG metrics. If, as seems likely, U.S. regulators follow a similar path, funds and corporations will likely revisit disclosures and business practices. And the number of data providers aggregating new ESG data and disclosures will continue to swell, hopefully making the marketplace for sustainable investing more transparent.

Funds and corporations will likely revisit disclosures and business practices.

In the interim, investors have their work cut out in separating the wheat from the chaff in ensuring that customized portfolios accurately represent the values and goals of their clients. Comprehensive wealth advisory and financial planning focused on a family's long-term plan – philanthropic

goals, next-generation education and investment priorities – should help drive the investment decisions across asset classes.

We believe the secular trends propelling ESG investing are likely to accelerate.

Impact investing, which doesn't just tilt toward or exclude ESG factors, but instead attempts to make investments that will have a more proactive impact, can be typically achieved through illiquid investment structures, which we will be reviewing in the next issue of *Independent Thinking*. We believe this approach can support both clear ESG goals and attractive returns. It's also important to note that portfolio managers acting on behalf of families and institutions with ESG goals need to have a firm understanding of the fundamentals of the underlying investments, across all strategies, whether passive or active.

Performance, long the shadow hanging over the heads of many sustainable funds, is no longer a sore point for investors. The average sustainable fund has outperformed peers broadly over the last one-, three- and five- year periods, with the majority of funds in the first or second quartiles for performance (see the chart below), thanks in large part to technology and sustainable energy gains.² We believe the secular trends propelling ESG investing are likely to continue and even accelerate, as regulators and both corporate boards and executives turn their attention more and more to ESG factors, notably in support of a transition to a greener economy.

The result should be something of a virtuous circle, in which a company with a strong management team, a durable franchise, and good long-term growth prospects must be focused on long-term secular changes that impact their industry and all of their stakeholders. Companies that consider a long-term view as they make capital decisions and run their businesses

day-to-day should be more likely to be more successful investments, from both a performance and a sustainability perspective. Customized portfolios of individual securities, mutual funds and illiquid investments can be designed around the values of individual families, foundations and endowments to deliver competitive returns to meet long-term ESG and financial goals.

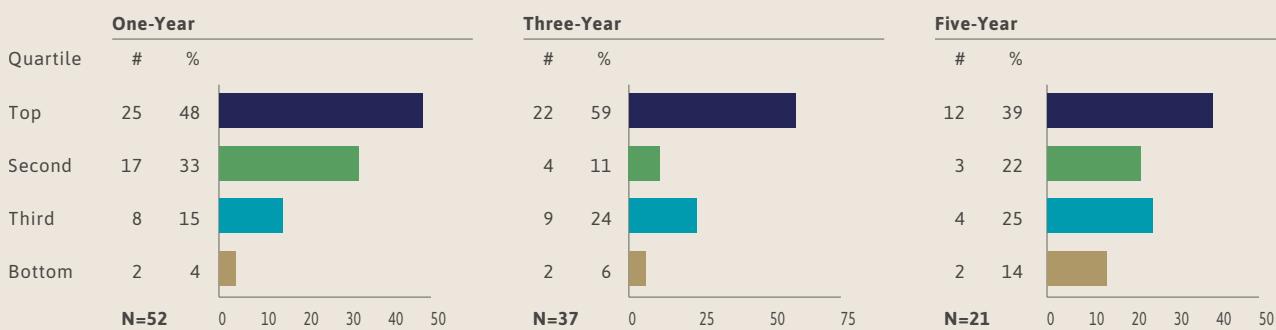
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¹ Morningstar's "Sustainable Funds U.S. Landscape Report" released in February 2021.

² Morningstar.

Performance is no longer a sore point for ESG investors

Sustainable U.S. Large-Blend Funds Outperform Category Peers



Source: Morningstar Direct. Data as of 12/31/2020. Note: Repurposed funds included after one, three or five years with sustainable objective.

The ABCs of SRI/ESG

By *Jake Stoiber*

Socially Responsible Investing (SRI) – The original definition of conscious investing, SRI tends to focus more on the passive avoidance of certain companies, most commonly referred to in relation to public companies. Portfolios can, for example, exclude companies with carbon-intensive operations or revenues derived significantly from tobacco, alcohol, gambling or handgun manufacture.

Environmental, Social and Governance (ESG) Investing –

Investors utilizing ESG considerations in public markets act proactively, making both exclusionary and inclusionary decisions, and balancing the E, S and G considerations as they wish. For example, they can focus on environmental issues, avoiding carbon-intensive companies while investing in renewable energy. ESG factors are increasingly used as a lens in which to analyze potential private market investments.

- Environmental criteria relate to company actions on energy use, waste, pollution, natural resource conservation and animal treatment, to name a few. This approach also evaluates which environmental risks might affect a company's income and how the company is managing those risks.
- Social criteria reference the company's relationships, both internally and externally. An extensive range of issues are covered, including a company's treatment of employees, its diversity and inclusion initiatives, and its charitable donations or stances on public issues.
- Governance in this context relates to the management of the company, and its system of rules, practices and processes – the ways in which a company balances the interests of all stakeholders, including shareholders, management, customers, suppliers, financiers, government and the community. Financial and accounting transparency, board of directors' conflicts of interest, and executive compensation are also governance considerations.

Impact Investing – More commonly referenced in regard to private investments, these investments target measurable social or environmental outcomes to go along with a financial return. Asset classes for investment are wide ranging; project sizes can be big or small; and financial returns are varied. Affordable housing, microfinance, and resource scarcity are notable targets for impact investment, with tangible outcomes likely to measure low-cost units developed, a lowering of the "unbanked" population, and increased access to clean water.

Sustainable/Conscious/Responsible Investing – These terms encompass all modes of directing capital toward companies and projects in a thoughtful, conscious and repeatable way to deliver competitive returns while meeting an individual's specific objectives.

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New York City: Love It or Leave It?

By Howard Cure

There are as many opinions about the future of New York City as there are New Yorkers. The city, which was the early U.S. epicenter of the pandemic, is now the focus of discussions around the future of urban life.

Editor's note: This article is extracted from a recently published paper.



Some have voted with their feet; others are certain that the city's best days are ahead. From a fiscal point of view, the future of the largest municipality in the United States matters to investors well beyond the five boroughs. The key will be to distinguish between short-term disruptions and lasting change.

While full out-migration patterns to date are in line with previous moves, there is still potential for a permanent – and negative – shift. The trend to remote work has coincided with improved communications technology and a significant demographic shift as two giant population groups, Millennials and older Baby Boomers, transition to family and retirement life, respectively, and from the costs and other stressors of high-density living.

In addition to migration out of the city, and the considerable related existing and potential revenue implications, the city's fiscal health will represent a big challenge for the next mayor (who will be elected in November). So too will public safety and the new awareness in all quarters of the city of the need for a more inclusive and equitable economic recovery. It is our view that New York City will remain a global center for finance, education, healthcare, technology and culture, but not without changes to its prior established position. Investment exposures should be allocated and managed accordingly.

Spreads, or the difference in bond yield between the issued debt and gilt-edged

AAA-rated debt, are starting to reflect the city's improving economy, thanks to the implementation of federal programs and effective vaccine distribution (see the chart below). Still, most spreads are wider now than pre-pandemic levels at the end of 2019, which means there are still selective buying opportunities, assuming the economy continues to recover. We will continue to monitor the pace of the economic recovery and the spreads on these New York credits to determine buying opportunities.

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Spreads are starting to reflect the city's improving economy

New York Issuer Spreads: 10-Year Yields vs Triple-A Benchmark

	2019	2020					2021							Change Since 05/29/20		
		Dec 31	May 31	May 29	Jun 30	Sep 30	Dec 31	Jan 29	Feb 26	Mar 12	Mar 31	Apr 28	May 28	Jun 07	Jun 09	
State of New York G.O.	-6	-6	+42	+19	+14	+3	+16	+16	+19	-5	-2	0	0	0	-3	-42
LIPA	+27	+31	+70	+38	+27	+22	+17	+25	+16	+17	+8	+13	+9	+12	-10	-58
Nassau County	+23	+24	+92	+76	+69	+60	+47	+48	+54	+50	+49	+47	+48	+53	-7	-39
NY Dorm Sales Tax	+9	+7	+54	+55	+36	+34	+22	+27	+25	+27	+31	+37	+33	+14	-20	-40
NY MTA	+33	+83	+304	+222	+324	+158	+97	+78	+87	+71	+57	+51	+42	+50	-108	-254
NY MTA Dedicated Tax	+9	+49	+188	+109	+100	+32	+33	+43	+40	+38	+28	+30	+29	+31	-1	-157
NYC	+15	+17	+66	+44	+56	+34	+32	+28	+33	+30	+25	+27	+22	+18	-16	-48
NYCTFA	+14	+27	+48	+45	+45	+25	+22	+30	+13	+39	+24	+18	+16	+17	-8	-31
NYC W&S	+9	+11	+18	+14	+20	+10	+9	+23	+18	+17	+10	+9	+4	+3	-7	-15
NYS Housing	+69	+71	+111	+106	+97	+93	+90	+88	+17	+69	+73	+77	+72	+73	-20	-38
NYU	+1	+5	+31	+27	+37	+23	+19	+17	+14	+15	+14	+4	+3	+3	-20	-28
Port Auth of NY & NJ	+9	+32	+91	+54	+58	+33	+28	+23	+24	+27	+14	+13	+10	+7	-26	-84
Westchester County	-26	+3	+7	+4	+1	-9	-22	-13	-11	-9	-6	-1	-2	+2	+11	-5

Spreads in basis points. Sources: CreditSights, Bloomberg BVAL benchmark yield curves.

Tax Change Proposals: Don't Panic, but Start Making Plans

By Helena Jonassen

Taxes, always inevitable, now seem to be heading inevitably higher. President Biden has proposed more than a dozen significant changes in federal tax laws. Here is a brief summary of the proposed tax changes that may affect high-income/high net worth individuals and families.

While they are far from certain, given the current political landscape, they remind us how quickly the wealth planning environment can change. Any decisions should make sense in the bigger picture of long-term plans.

American Jobs Plan (the Made in America Tax Plan): The plan proposes as much as \$2.3 trillion to fund infrastructure investments and spending on other priorities, such as public housing, energy

efficiency, education and economic development. It also proposes hiking corporate income taxes to 28% from 21%, and changing U.S. international tax rules to boost revenues from the foreign earnings of U.S. corporations.

American Families Plan: This \$1.8 trillion plan to fund college education, universal preschool, childcare, paid leave, and support low- and middle-income families would include some tax relief by making permanent certain tax credits. This would be partially funded

by taxing the better off, with proposals including the following (effective January 1, 2022 unless otherwise noted):

- Increasing top marginal tax rate on individuals to 39.6% from 37% for income over \$509,300 for married filing jointly and \$452,700 for single filers.
- Taxing capital gains as ordinary income at 40.8%¹ (37%+ 3.8% in net investment income, or NII) for individuals with adjusted gross income over \$1 million, effective April 28, 2021.
- Taxing unrealized capital gains at death and at transfer by gift (exemption of \$1 million individual or \$2 million for joint filers and certain other exclusions). In addition, distributions in-kind from an irrevocable trust, partnership or non-corporate entity will become a capital gains-recognition event. Spousal and charitable transfers are excluded.

¹ In 2022, this rate would increase to 43.4%.

- Taxing unrealized capital gains on trusts, partnerships or other non-corporate entities on property that has not been subject to a capital gains-recognition event within the prior 90 years (beginning January 1, 1940).
- Applying the 3.8% NII to all income over \$400,000 including active pass-through income unless subject to Self-Employment Contribution Act, or SECA.
- Taxing carried interest as ordinary income for those with taxable income over \$400,000.
- Eliminating like-kind exchanges (1031 exchanges) on real estate

gains greater than \$500,000 for each taxpayer.

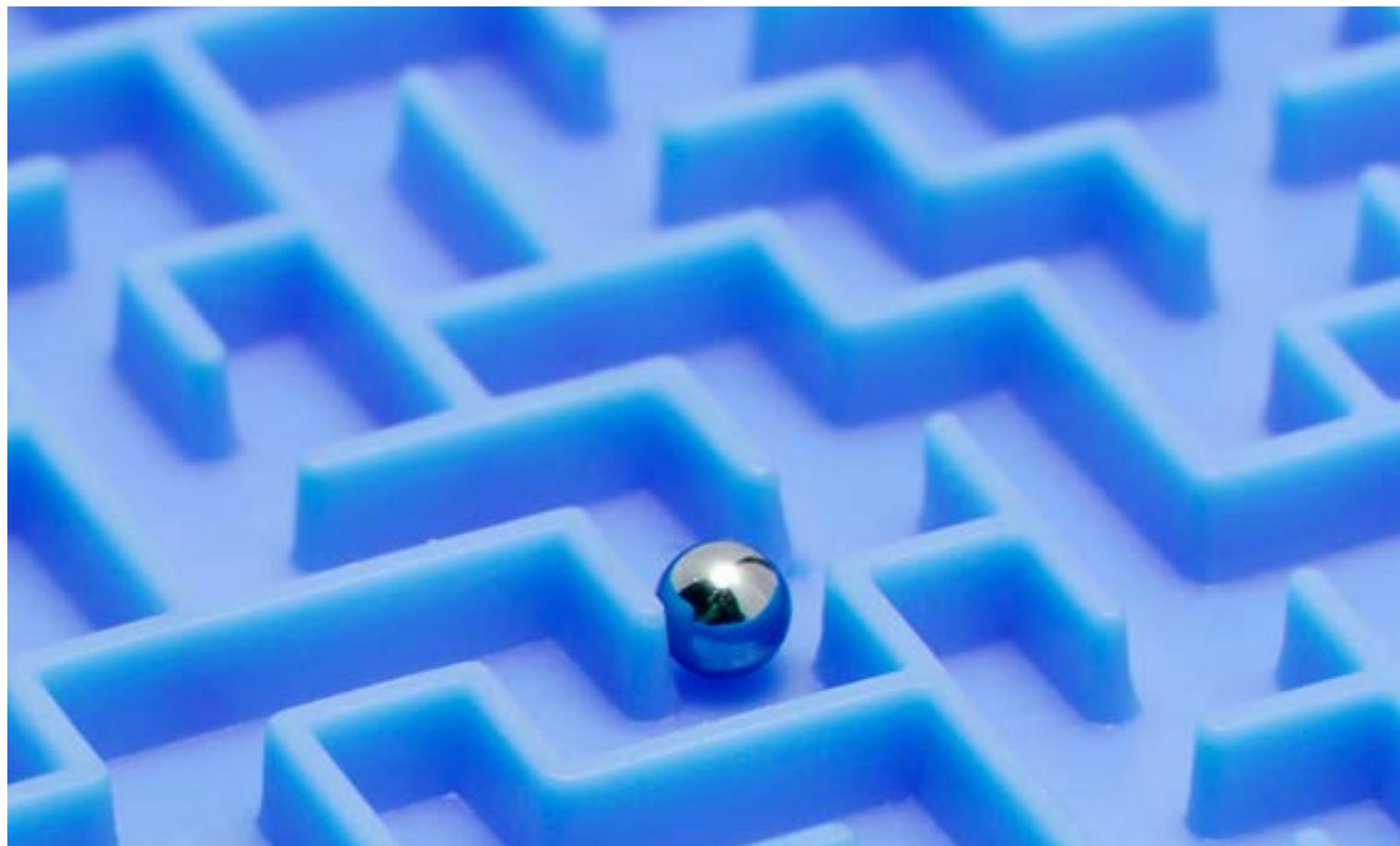
- Permanently limiting pass-through business losses.
- Increasing funding of the IRS for individual tax enforcement and enacting new reporting requirements for financial institutions.

In this very uncertain planning environment, we suggest you discuss the following with your advisors if applicable:

- If you are selling a highly appreciated real estate investment, consider a 1031 exchange into a like-kind asset while the option is still available, and if it fits

in with your overall investment and financial plan. While you typically have 180 days to complete a like-kind exchange, the proposal's effective date is for exchanges that are completed after December 31, 2021. So, both parts of the exchange must be completed in the current year if this legislation passes.

- If you are considering selling an appreciated asset in the coming years, you may wish to consider selling it now, again if appropriate to your overall plan. We know what the federal tax rate is on long-term capital gains now, but it may change in the future. The Biden Administration's recently released



\$6 trillion budget references capital taxes dating from April 28, 2021, so there is certainly a risk of retroactivity, but both Ways and Means Chairman Richard Neal and Finance Chairman Ron Wyden have previously stated their opposition to retroactive tax increases.

- Consider accelerating income if it makes sense in your personal plan. A conversion to a Roth IRA may also make sense for those potentially subject to higher tax rates in the future. An analysis should show if the current payment of tax is outweighed by the tax-exempt growth of assets in a Roth IRA. The conversion may be more attractive if you have a significant reduction in income or have a large offsetting deduction in the current year. If you have charitable intent, you should consider if it makes more sense in the long run to leave your tax-deferred asset like your IRA or retirement plan to charity instead of making a Roth conversion.
- Consider deferring deductible expenses such as charitable gifts, because the value of the deduction may be higher if the income tax rate is higher. It's important to note that limits to the deduction may also be on the table in the future.

In addition, although changes in estate tax and estate plan legislation is not contemplated by the budget proposal, we continue to recommend that you:

- Work with your Wealth Advisor, attorney and tax advisors to determine if you can utilize your \$11.7 million per person lifetime exemption in the context of your (and your spouse's) lifetime needs

and your estate-planning goals. If you have used your own exemption, consider utilizing your heirs' lifetime exemption and generation-skipping tax, or GST, exemption on a non-GST irrevocable trust for their benefit. That would mean terminating those trusts in their favor (assuming that it is permissible under the terms of the trust document) and recreating them in Delaware or another state with no limit on trust perpetuity, thereby removing those assets from estate tax for generations to come.

- Consider utilizing grantor retained annuity trusts, or GRATs, valuation discounts or other similar vehicles, taking advantage of current laws and the current low interest rate environment.

Most important, don't act precipitously. We don't know what the final legislation will include, and tax laws change all the time. President Biden will have difficulty passing any increases in taxes, particularly individual taxes, and it seems likely that his \$6 trillion budget will incur some drastic reductions. Any wealth-planning decisions in anticipation of tax changes should be made in the context of your broader financial goals.

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Crossing the Delaware: Directed Trusts For Complex Families

By Alex Lyden-Horn

Modern family wealth is increasingly mobile, global and entrepreneurial, often sourced in a variety of ways and allocated across a range of traditional and nontraditional investments. Families have lived through tumultuous social, economic and political times, and understand that the future is impossible to predict. Like them, their estate plans have to be adaptable.

While a well-crafted traditional trust, as described by Jeff Maurer on page 17, often makes the most sense for most families, more complex trusts established in certain trust-friendly states can provide enhanced flexibility to those with special circumstances.

Let's consider some of the key options available in these jurisdictions: bifurcation of trust functions; the ability to retain a beneficial interest in the trust; control over trust information; and flexible options for existing trusts.

BIFURCATION OF TRADITIONAL TRUST FUNCTIONS

A typical trust appoints a trustee with authority for investments and distributions. A directed trust allows for the allocation of those functions to a separate advisor or advisors. There are generally no statutory requirements for or limitations on how these roles are defined, meaning that they can be completely customized to meet specific needs.

For example, a special asset advisor can be appointed solely to oversee a

closely held operating business, with the trustee continuing to provide traditional investment management services for the remaining assets. Similarly, a special distribution advisor can be appointed to control distributions for a beneficiary with special needs or substance abuse concerns, with the trustee retaining distribution authority for the remaining beneficiaries. It is also possible to appoint an advisory committee rather than a single advisor, thereby providing opportunities for family members, across multiple generations, to be involved in trust decision making (subject to any



Modern family wealth is increasingly mobile, global and entrepreneurial.

limitations on related powerholders under the tax laws).

Directed trust statutes also permit the appointment of a trust protector, who may be given broad powers to oversee the administration of the trust and to intervene when necessary. Common powers given to the trust protector include the power to amend the trust (including dispositive provisions), the power to add or remove beneficiaries, the power to change situs, the power to remove the trustee (and other advisors) and appoint successors, the power to divide, merge, combine or decant the trust, and even the power to terminate the trust early and distribute the assets outright. With perpetual or dynasty trusts that are designed to last for multiple generations, it is important to maintain the ability to modify or adapt the trust to take into account changes in circumstances that may affect the suitability of the original plan put in place for beneficiaries. Vesting

those powers in a carefully selected independent trust protector provides continuity of oversight in the event of incapacity or death and can ensure that the trust can be monitored to avoid adverse tax consequences.

RETAINING A BENEFICIAL INTEREST IN THE TRUST

Several states now have laws expressly permitting the creation of a self-settled trust, often referred to as an asset protection trust. What sets these apart from traditional trusts is that they permit an individual to name themselves as a beneficiary of their own irrevocable trust, while still having the trust assets protected from their creditors (and excluded from their estate, if properly structured as a completed gift). While, as the name suggests, these trusts are typically used for asset protection purposes, the ability for the grantor to retain a beneficial interest, while still having

the trust be treated as a completed gift, adds an invaluable level of flexibility to any trust structure.

Another example, is a traditional dynasty trust, funded with an individual's entire lifetime exemption, which would ordinarily place those assets outside the reach of that individual should a financial need arise in the future, a consideration that many families find discouraging. One popular option is to include the spouse as a discretionary beneficiary, giving the grantor an indirect means to access the assets in the future. This does come with its own set of potential pitfalls, particularly if both spouses wish to establish trusts. This also isn't an option for unmarried individuals. However, in an asset protection trust jurisdiction such as Delaware, the grantor can simply name themselves as a beneficiary of the trust, without changing its status as a completed gift dynasty trust.

Some advisors may consider the creation of a self-settled trust to be an overly aggressive strategy, given the relatively unproven nature of the structure from an estate and gift tax perspective, particularly for clients living in jurisdictions that do not allow asset protection trusts. It may be highly unlikely that the grantor would ever need to access the trust assets. In that case, a more conservative option would be a hybrid approach, whereby a trust is created in an asset protection trust jurisdiction and is structured in a way that it would qualify as a valid asset protection trust, but the grantor is not included as a beneficiary from the outset. Instead, a trust protector is given the power to add beneficiaries from a class that includes the grantor. In this way, at the time of creation and unless or until the grantor is added as a beneficiary, the trust would be treated as nothing more than a traditional completed gift dynasty trust. The grantor still retains the option to be added as a beneficiary should there be an extraordinary change in circumstances that necessitates access to the trust assets.

CONTROLLING THE FLOW OF INFORMATION

When creating a trust, it may be difficult to know how much information should be shared with trust beneficiaries and at what stage of their lives. Under most states' laws, a trustee, by default, is required to inform adult beneficiaries of the existence of the trust and their status as a beneficiary. The beneficiary may then be entitled to further information, including accountings and copies of trust documents, upon reasonable request. This may be problematic, for example, if a beneficiary has a spending problem or is likely to use the availability of trust assets as an excuse to not provide for themselves.

A more trust-friendly jurisdiction may provide significant advantages.

However, Delaware and similar jurisdictions allow a trust instrument to limit or eliminate a beneficiary's right to be informed of the trust for a period of time, which may be based on several factors, including the lifetime of the grantor or the age of a beneficiary. During that period, a trustee can be permitted to share limited information with specific beneficiaries, or the trust can be completely "silent" until the period has lapsed. It should be noted that a completely silent trust can create administrative complications, particularly if the intent is to make distributions during the silent period. In that instance, a trust protector may be given the authority to modify the notification restrictions if they are no longer in the best interests of the beneficiaries. In addition, depending on the specific jurisdiction, a designated representative may be appointed to represent the beneficiaries and act on their behalf in any judicial or nonjudicial proceeding (including court proceedings and nonjudicial settlement agreements) during the silent period.

OPTIONS FOR EXISTING TRUSTS

Depending on the terms of the trust and the laws of the trust's home jurisdiction, moving a trust to take advantage of the above strategies may be as simple as appointing a trustee authorized to administer the trust in the new jurisdiction, with no court proceedings required. Often, the governing law of the trust will change immediately upon the change in the place of administration. The trust can then fully avail itself of the various modification options under

the new jurisdiction law, which may include decantings, mergers, nonjudicial settlement agreements, and modifications by consent.

These options are not for everyone. Establishing a trust in or moving an existing trust to a jurisdiction other than the grantor's home jurisdiction invariably involves an additional level of time and expense, and often requires the retention of separate local counsel. In addition, deviations from the traditional trust structure, whether through a directed trust, a self-settled trust or a silent trust, provide an additional level of administrative complexity that should be balanced against the potential gains, in consultation with advisors. However, for the increasing number of families with complicated estate planning needs, a more trust-friendly jurisdiction may be able to provide significant advantages, and can serve as a valuable complement to traditional trusts as part of a comprehensive estate plan.

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Constructing a Family Financial Scaffold

By Jeff Maurer

I really like scaffolding as a metaphor for supporting our families. I like it so much that I'm borrowing it from Dr. Harold Koplewicz, President of the Child Mind Institute, author of *The Scaffold Effect: Raising Resilient, Self-Reliant, and Secure Kids in an Age of Anxiety* and our guest on a recent client webinar (see the recap on page 20) – and extending it to wealth management.



Essential considerations to address in your scaffolding trust

Provisions that provide the most flexibility are best.

- How long should your trust last? The longer, the better is the answer for most families establishing a trust, to serve multiple generations. Keep in mind that the span of the trust may be limited by state law, and the trust can be terminated at any time by your trustee or by your primary beneficiary at his or her death.
- What can the trustees do with the income and the principal of the trust? The trustees should have the ability – and flexibility – to vary the timing, amounts and proportions of payments to the beneficiaries, as individual and family circumstances evolve. This includes paying out all of the principal and terminating the trust if appropriate.
- What happens on the death of the primary beneficiary? The primary beneficiary can have the right to direct in their will how the trust passes on his or her death, in equal or unequal shares, outright or in trust. Absent such direction, the trust can continue for the next generation.
- Beneficiaries should have the right to change trustees, especially a corporate trustee. A corporate trustee should be replaced with another corporate trustee to retain institutional supervision.
- For families with special circumstances, such as those with a large, closely held business or multinational families, a more complex trust may be appropriate. Please see the article by Alex Lyden-Horn on page 14.

Isn't some measure of financial scaffolding exactly what many of us are trying to provide our children and, perhaps, grandchildren and future generations?

Think of a scaffold outside a building – easy enough if you live in New York or another big city. It typically enables the building to rise higher. In wealth management terms, this means providing just the right degree of financial support and structure to allow children to fulfill their potential. The best scaffolding will vary by family and for each family member, as each individual is unique and will develop – and will come to define happiness and success – in his or her own way. But truly supportive family financial scaffolds generally have three common elements. Let's review them here.

First, sustainable financial scaffolding is built on a firm ground. In this sense, parents understand and are

comfortable with their own financial future before extending support to others. This means thoroughly reviewing lifestyle goals and analyzing cash flow to account for aging, balancing family needs with philanthropic commitments, and other, less foreseeable changes. Once the foundation is set, the scaffolding can rise.

Scaffold construction should be flexible, able to adjust to changing family structures and circumstances.

Second, the focus of the scaffolding tends to be on educating the next generation. That doesn't just mean funding tuitions and learning experiences, although that is a big component in most family financial

superstructures. It also means providing the scope, restraint and flexibility to educate children to understand how fortunate they are to have this support, and working to instill strong, lasting values that they can share with future generations.

Third, the scaffold construction should be flexible, able to adjust to changing family structures and circumstances. Trusts can be very effective scaffolding tools, if structured and administered appropriately.

That's the theory. Here's an example of how a strong scaffolding that included a thoughtfully drafted, well-administered trust can work in practice.

A couple who negotiated the successful sale of their transport company several years ago were able to fund trusts for their two children using their full estate and gift tax exemptions. At the couple's deaths in 2020, the trusts were

worth \$40 million and the remaining \$30 million left in the couple's estate was left to a family foundation. The co-trustees, a relative and a corporate trustee, like all good trustees, had and continue to have important decisions to make. (See the *Independent Thinking* article, *Choosing the Right Trustees* [here](#).)

- Provisions were made to protect the couple's children from the financial consequence of divorce, and to restrain overspending and deter them from other potential errors in judgment, but thankfully, the protection provisions were not needed. Both children, now middle-aged, are happily married and enjoy rewarding careers. One of the siblings counts on the trust income to supplement a modest salary as a professor; the other hasn't needed the income since she graduated from medical school, has a financially rewarding career and is married to a corporate executive. So managing that discrepancy by providing an income to the first and agreeing to accumulate distributions in favor of growth for the second makes sense here.

Well-crafted and properly administered trusts can serve as financial scaffolds.

- The next generation – the grandchildren of the benefactors – requires careful consideration, at present particularly the young adult children of the financially better-off couple.

One of the two young adults has special cognitive needs that means he'll require lifetime support; the

other has just earned a PhD in special education. Their parents, with the help of the trustees, have made the appropriate provisions in their wills to ensure care for the older child (while ensuring that he remains eligible for public benefits over his lifetime). The daughter will become a co-trustee of her brother's assets if she is willing and when she is prepared. Ultimately, the assets will be redirected to the daughter and her future family.

Their cousins, the children of the professor and his librarian wife, are still in high school. But the parents are already preparing them to be good custodians of the wealth they stand to inherit. With the potential risks as well as opportunities in mind, they have included many of the provisions in their own wills that the grandparents did in the original trust, to protect and encourage the children in whatever their futures hold.

- The family foundation is a charitable trust with five members of the family – both sets of parents and the adult daughter – serving on the distribution committee and the trustees managing the assets. The foundation supports research into autism as well as a medical fellowship program at the grandmother's medical school. This reflects the current interests of the family and will evolve as their interests evolve, and will help keep the family engaged and together sharing their grandparents' values as well as wealth across generations.

Well-crafted and properly administered trusts can serve as financial scaffolds for families, even for generations. They can provide help when it's needed and encourage the beneficiaries to reach new heights.

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The Scaffold Effect

Reentry into an in-person world after so long in a digital one is well underway across the United States. But no one said it was going to be easy.

Our recent webinar, *Independent Thinking panel series: Reentry: Supporting Children (and Grandchildren) in a Changed World: A Conversation with Dr. Harold S. Koplewicz and Jeff Maurer*, addressed the role of parents and grandparents in helping the next generation transition to the new normal.

Children and young adults between the ages of 13 to 24 will have the hardest time adjusting to the new normal, according to Dr. Koplewicz, while younger children will likely be the most resilient. The author and child psychiatrist drew on the central concept of his book, *The Scaffold Effect*:



Raising Resilient, Self-Reliant, and Secure Kids in an Age of Anxiety, to illustrate the type of structure that might best help children now. That starts with the sound mental and physical health of the parents and extends to suggestions on providing reinforcement, structure and warm encouragement to support the child's growth to independence.

Contact your advisor for replay details.

To Boldly Go: The Mars Webinar

The timing of the April 27 Evercore Wealth Management *Independent Thinking panel: Let's Visit Mars with Dr. Dava Newman* was fortunate: In the same week, NASA's Mars helicopter *Ingenuity* set records, flying faster and farther than expected.

Dr. Newman, the Apollo Program Professor of Astronautics at the Massachusetts Institute of Technology and former



Deputy Administrator of NASA, and Boyd Matson, former National Geographic anchor, discussed the development of new advanced space technologies and addressed client questions. The educational event was hosted by Evercore Wealth Management Partner and Portfolio Manager Judy Moses.

Contact your advisor for replay details.

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