

# Trust Connection

*Building Lasting Relationships for the Benefit of our Mutual Clients*

## TRUST NEWS AND INFORMATION FROM YOUR TRUST REPRESENTATIVE OFFICE

Welcome to *Trust Connection*,  
a regular communication from  
Valley National Trust Services.



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## Prudent Investor Considerations

### **What is the Prudent Investor Rule?**

The Prudent Investor Rule calls the fiduciary to make investment decisions as if they were her or his own. This means that the fiduciary should refrain from making investments that are overly risky. The needs of the trust's beneficiaries should always be considered. These needs can include; lack of investment knowledge, trust assets, and income.

It's important to note that no one can predict with certainty what will happen with any particular investment decision. Therefore, a prudent investment will not always have the guarantee to turn out profitable. Because of this, the prudent investor rule is only applied during the decision-making process while investing the assets of a trust.

### **Prudent Investor Rule - A History**

The year was 1830 and the case was Harvard v Amory. In the case, Harvard college alleged that the trustees had willfully made high-risk bets in order to benefit the deceased man's widow rather than establish a standard source of income. As a response, Judge Samuel Putman formulated the Prudent Man Rule, the earliest record to attempt prudent standards for investment. "All that can be required of a trustee to invest is that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion, and intelligence manage their own affairs, considering the probable income, as well as the probable safety of the capital to be invested," Putman wrote as a judgment.

### **Prudent Investor Rule In Action**

Michael is a 26-year-old male who has entrusted his collected savings to a fiduciary. He is young and reasonably tolerant of risk, so he likes the idea of a diversified portfolio that includes regular income from funds as well as cryptocurrencies. His financial advisor provides him with the necessary advice regarding

cryptocurrencies (being risky, he is not allowed to recommend them) and invests a portion of Michael's savings in risky assets, such as penny stocks, in accordance with his philosophy.

### Prudent Takeaways

- In order to support the beneficiaries, a declaration of trust is used to provide specific instructions for those in management
- To avoid a dramatic drop in values, the prudent investor rule specifies that fiduciaries should invest in assets as if they were her/his own
- Judge Samuel Putman formulated the Prudent Man Rule to make the first prudent standards for investment

### The Uniform Prudent Investor Act (UPIA)

In 1992, the American Law Institute Third Restatement of the Law of Trusts adopted the Uniform Investor Act. The UPIA was an update to the Prudent Man Rule. The UPIA created a greater diversified investment portfolio by eliminating category restrictions on different investments. The Act made it possible for the trustee to include investments such as commodities, futures, and derivatives to their portfolios. Yes, individually these investments have high risk. However, together they possess the possibility to boost returns within the total portfolio.

### The UPIA's Updates to the Prudent Man Rule

Four main changes the UPIA made from the Prudent Man Rule:

1. The fiduciary can delegate management of the investment and other functions to third parties
2. For prudent fiduciary investing, as a duty, diversification is required.
3. No investment is considered wholly imprudent. In turn, actions that support the portfolio's needs are

considered. Therefore, investments such as futures, derivatives, lien loans, and other similar investments are possible, but outright risks are not covered by the rule and will be subject to liability.

4. Under the UPIA, if the investment was consistent with the objectives of the portfolio, the fiduciary would not be held liable for individual investment losses. When determining the prudence of an individual investment, the whole portfolio is considered.

The UPIA's biggest change was that the prudence standard would apply to the entire portfolio, not just individual investments.

### Prudent Investor Rule and Trust Management

Trusts are set up with specific, strict policies due to the amount (often many) collaborators involved. The trust outlines who will serve as trustee and the powers they hold, who can revoke or amend the trust (if at all), a trustee replacement, and distributions.

At its core, the declaration of trust is the trust's instructions to the trustee on how to invest to best serve the beneficiaries. Some states require a written declaration while others do not.

This document, depending on its objectives, highlights specifics regarding the assets in the trust. Let's say that the goal of a certain trust is to provide a somewhat continuous stream of assets to the beneficiaries in the same family for multiple generations. In this case, the trust will more than likely have more securities in place, such as Treasury securities.

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